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GUARDIANSHIP

a way of fulfilling

public responsibility

FOR CHILDREN

FEDERAL SECURITY AGENCY

Social Security Administration

Children's Bureau

GUARDIANSHIP

a way of fulfilling

public responsibility

FOR CHILDREN

by

IRVING WEISSMAN

In association with

Laura Stolzenberg

Harry S. Moore, Jr.

Robbie W. Patterson

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Introduction: Plan of Study

This study was undertaken by the Children's Bureau with three major objectives in mind: The first was to discover the circumstances under which guardianship is necessary and desirable for children. The second was to ascertain the procedures by which guardianship can be provided most effectively for children who need it. The third was to determine what judicial and social services are needed to protect children adequately while under guardianship.

It is hoped that this report will supply a basis for setting standards, revising legislation, and improving services to children in relation to their guardianship.

NEED

The idea of the study goes back to the pioneering researches done by Sophonisba P. Breckinridge and her students at the University of Chicago School of Social Service Administration, notably Hasseltine Byrd Taylor, author of *Law of Guardian and Ward* [*21*],[1] and Mary Stanton, whose doctoral thesis on the subject of guardianship is in press.

Through these earlier studies and through reports and questions coming direct from States and local communities, the Children's Bureau has long been aware of the need for special attention to problems related to the guardianship of children.

Problems that have long existed have been joined of late by others growing out of recent developments. For example, as a result of war casualties and wartime and postwar disturbances of family life, great numbers of

[1] Numbers in brackets throughout the report refer to numbered items in the Bibliography and List of References, beginning on page 193.

children have been separated from their parents, with consequent increasing need for their care and supervision away from home. Then, too, more and more children are becoming eligible for financial benefits under social-security and veterans' legislation; to ensure that payments are used for the children's benefit, safeguards are increasingly necessary—especially when the children are not living in their parental homes. And finally, public welfare agencies of the States and of local communities are taking more responsibility for children; to clarify public responsibility, greater attention must be given the legal status of children.

These matters—the care of children outside parental homes, the protection of their funds, the assumption of public responsibility for them—all frequently involve questions of guardianship. This fact was borne out in informal discussions with other Federal agencies, particularly those handling social-security and veterans' benefits, and in exploratory visits to several States, during the preliminary stages of the study.

The experience of the agencies in Washington and in the States visited indicated that the handling of questions of guardianship is much handicapped by lack of first-hand information concerning guardianship procedures and practices. Though guardianship is an old subject, it seems that its study has been generally neglected by social workers and by lawyers.

In this connection, it is noteworthy that there are but two books devoted exclusively to the subject. These are *A Treatise on the American Law of Guardianship of Minors and Persons of Unsound Mind* [*23*], by John G. Woerner, published in 1897, and *Law of Guardian and Ward* [*21*], by Hasseltine Byrd Taylor, published as a University of Chicago social-service monograph in 1935. The latter is particularly valuable to social workers, as it contains a comparative analysis of State legislation on the subject from the point of view of social-work principles of child protection.

In legal literature, a summary of important case rulings and State laws is presented in the article "Guardian and Ward" in *39 Corpus Juris Secundum*. The recently published (1946) *Model Probate Code*, prepared by the research staff of the University of Michigan Law School in cooperation with a committee of the American Bar Association, contains a section on guardianship which sets forth many forward-looking proposals for revision of existing legislation and for the social implementation of guardianship procedure.

Social-work literature contains only brief general reference to the subject except for the Taylor book and Sophonisba P. Breckinridge's *The Family and the State* [*3*] and Grace Abbott's *The Child and the State* [*1*]. The last two works include selected historical documents on the subject. In recent years the *Social Service Review* has published a number of articles on special phases of the subject, notably by Sophonisba P. Breckinridge and Mary Stanton. In 1945 Miss Stanton prepared a preliminary statement on

"Guardianship of Children Under the Law of Guardian and Ward" while serving the Children's Bureau as a special consultant on guardianship.

Formal discussion of the subject in social-work circles appears to have been incidental, to judge by the absence of papers on the subject in publications such as the proceedings of the National Conference of Social Work, the *Bulletin* of the Child Welfare League of America, and the *Journal of Social Casework* or its predecessor, *The Family*.

FOCUS

The scarcity of material from previous study and the ramifications of the subject made for difficulties in planning this study and in deciding on its focus, scope, and content. Because legal guardianship is created by court process, it was decided to focus on courts having the power of appointing guardians of children. Practical considerations dictated limiting the study to two local jurisdictions in each of six States.

SCOPE

The States selected were California, Connecticut, Florida, Louisiana, Michigan, and Missouri. Their selection was influenced by considerations of geographical location, statutory provisions for guardianship, and other special factors indicated in table 1.

Local communities within the States include two probate districts of Connecticut—Hartford and Greenwich; two judicial districts of Louisiana—East Baton Rouge and Caddo; and two county jurisdictions in each of four states—Los Angeles and Sacramento in California, Alachua and Duval in Florida, Kent and Muskegon in Michigan, and Cole and Jackson in Missouri. Their selection was influenced by the contrasts in their characteristics shown in table 2.

NATURE

The study was directed primarily at finding out the use made of legal-guardianship procedure for protecting the persons and estates of children.

It examines and describes the philosophy behind guardianship; the historical background; the current statutory provisions of the States in the study; the relations of guardian and ward in typical situations; the characteristics of guardians and wards; the court of jurisdiction; court processes of appointing, supervising, and discharging guardians; the court use of social services; the cost of guardianship; and the impact of guardianship on social-service programs, on the aid-to-dependent-children program, and on Federal benefit programs.

METHODS

Five methods were used in gathering the information in this report: The first involved review of the laws relating to the guardianship of minors in each State of the study. The second involved interviews with judges and other court people concerning court organization, policies, and procedures, and with lawyers, public officials, and social workers concerning their contacts with the court in relation to guardianship cases. The third involved observation of the courts at work. The fourth involved reading court records, and statistical study of cases before the court for appointment and discharge of guardians during the entire year 1945. The fifth involved case-study of a small number of children under guardianship, by home visits and by reading of case records on those children who were found to be known to social agencies. The field work was carried on during the fiscal year July 1, 1946, to June 30, 1947.

Some 4,000 schedules on individual children were prepared from court records. Case studies of 67 children under guardianship were made by home visits and by interviews with guardians, wards, and other interested persons. Special study was made of the social-service work done in guardianship cases at the probate courts of Wayne County (Detroit), Michigan, and the city of St. Louis, Missouri.

STAFF

The study was conducted by the Bureau's Social Service Division, of which Mildred Arnold is director. General supervision was given by Alice Scott Hyatt, the division's director of special services. A small staff was assembled for the study, comprising the director, Irving Weissman, and

Table 1.—Considerations influencing the selection of States for the study of guardianship of minors

Factors	California	Connecticut	Florida	Louisiana	Michigan	Missouri
Geographic region.	Pacific.	New England.	South Atlantic.	West South Central.	East North Central.	West North Central.
Basis of legal system	Common law.	Common law.	Common law.	Civil law.	Common law.	Common law.
Court having jurisdiction.	Superior.	Probate.	County judge.	District.	Probate.	Probate.
Area served by court.	County.	1 to 8 townships.	County.	1 to 5 counties.	County.	County.
Court includes juvenile-court jurisdiction?	Yes.	No.	Yes, except in populous counties.	Yes, except in Caddo and Orleans districts.	Yes.	No.
Estates exempt from guardianship.	Under $500; settlement funds under $2,000.	Under $100.[1]	Under $500 if not real estate; settlement funds under $100.	None.	None.	Under $100 and not derived from parents.
Provision for social investigation?	Permissive in petitions for appointment of guardian.	Permissive in termination of parental or guardian rights.	No.	No.	No.	No.
Guardianship responsibility of State welfare department.	None.	Statutory guardian of person. May be appointed guardian of estate under $500.	Statutory guardian in adoptions. May deal with improper guardianship.	None.	None.	Statutory guardian of person.
Other special factors.	Public guardian for Los Angeles County. Temporary guardian appointed.		Revised guardianship laws in 1945.	Use of family meetings; undertutors; temporary guardians.	Temporary guardians appointed.	Public guardian. Public reporting of children in need of guardianship.

[1] This amount was changed to $500 by an amendment in 1947; Conn. Gen. Stat. (1949) sec. 6855.

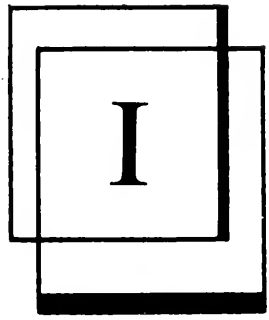
Table 2.—Characteristics of localities included in the study

Area served by court	Type of community	Principal city	Population (1940) of area served by court		Special court features
			Total	Under 21	
California:					
Sacramento County.	State capital; fruit-canning center; home office State welfare department.	Sacramento	170,333	49,865	Has four judges.
Los Angeles County.	Diversified industrial.	Los Angeles	2,785,643	766,611	Divided into branches and departments, with separate departments handling guardianship and juvenile-court cases in Los Angeles branch; uses public guardian and court commissioners; seven judges are concerned with guardianship cases.
Connecticut:					
Hartford District.	State capital; insurance center; home office State welfare department.	Hartford	233,103	71,695	Serves largest probate district in State including 8 towns.
Greenwich District.	Wealthy residential.	Greenwich	35,509	10,908	Serves only the town of Greenwich.
Florida:					
Duval County.	Industrial; wholesale center; Navy port; home office State welfare department.	Jacksonville	210,143	71,461	Has no juvenile-court jurisdiction.
Alachua County.	Citrus-growing center; State university.	Gainesville	38,607	15,432	Has juvenile-court jurisdiction.
Louisiana:					
First Judicial District (Caddo Parish).	Oil-refinery and industrial center.	Shreveport	150,203	54,784	Has no juvenile-court jurisdiction; has four judges.

Table 2.—Characteristics of localities included in the study (Continued)

Area served by court	Type of community	Principal city	Population (1940) of area served by court		Special court features
			Total	Under 21	
Nineteenth Judicial District (East Baton Rouge Parish).	State capital; State university; home office State welfare department.	Baton Rouge	88,415	33,421	Has juvenile-court jurisdiction; has two judges.
Michigan:					
Kent County.....	Furniture center.	Grand Rapids	246,338	86,335	Has two judges.
Muskegon County.	Auto parts; farming.	Muskegon City	94,501	35,991	Has one judge.
Missouri:					
Jackson County...	Diversified industrial.	Kansas City	477,828	134,774	Has two separate branches.
Cole County.....	State capital; farming; home office State welfare department.	Jefferson City	34,912	11,006	The judge is not a lawyer.

two associate consultants, Harry S. Moore, Jr., and Laura Stolzenberg. Robbie W. Patterson was employed part time to do field work in the State of Florida. In Los Angeles, Dr. Elizabeth Frank and Miss Arline Lewis were generously loaned by the Welfare Council of Metropolitan Los Angeles, to assist in securing data from local court records. Other individuals and organizations too numerous to mention gave assistance and information. Their courtesy and generosity are gratefully acknowledged.



Design for Guardianship

1. The Underlying Philosphy

The spirit of the law, to say nothing of the gospel, is not yet in us.
Edward T. Devine, Progressive Social Action.

The child has become in our time a person in his own right. The growth of a sense of responsibility for him has caused new social valuations to attach to him and has engendered new legal concepts concerning his rights and relations.

These changes are increasingly reflected in legislation asserting the superiority of the welfare of the child over the wishes of the parents; the equal and joint responsibility of the father and the mother; the equality of siblings regardless of order of birth and regardless of sex; the superiority of human rights over property rights; and the ultimate obligations of society to protect the child.

THE CHILD ACQUIRES RIGHTS

A considerable body of statutory law has been enacted in the States, to spell out the rights of the child. Stimulation and guidance came in recent

years especially from *The Children's Charter*, listing a bill of particular rights of the child, which was formulated by the White House Conference on Child Health and Protection, in 1930.

Enactments range over wide fields, including health, education, employment, recreation, and social welfare. They particularize the child's right to care, teaching, training, and treatment. In a number of States they have been brought together in a general compilation of laws relating to children and printed in an official or unofficial State publication.

See, for example: *Social Welfare Laws of Connecticut,* revised through 1945, published in 1946 by the Public Welfare Council of Connecticut; *Florida Laws Relating to Children,* compiled for the Florida Congress of Parents and Teachers by the Office of the Attorney General, 1945; *Michigan Juvenile Laws for Police Officers,* published by the Commissioner of the Michigan State Police, 1945; *Laws of Missouri Relating to Public Welfare Work,* published by the State Social Security Commission of Missouri, 1944; and *Welfare and Institutions Code and Laws Relating to Social Welfare,* published by the California State Printing Office, 1945.

While the details of this imposing structure of legal rights for the child differ considerably for individual States, the underlying philosophy is everywhere the same: The child is entitled to live, grow, and develop to the fullest potentialities of his individual capacity.

SOCIETY'S COMMENSURATE RESPONSIBILITIES

Along with the enlargement of the child's legal rights has come tremendously increased responsibility to those who care for children. This, too, is defined in law. Many statutes detail the responsibility of parents and other persons to the child; others declare a policy of public responsibility for children.

The public policy of protection of the child is reflected especially in laws that presume his lack of capacity and responsibility to protect himself; that prohibit and regulate conditions harmful to his morals, health, and security; and that prescribe procedures for effectuating and enforcing his rights and the responsibilities of others toward him.

The fundamental ideas behind this body of legislation are that—

1. The child is too immature and inexperienced to make his own choices and decisions and to realize his rights wisely and responsibly.
2. The exercise of these basic rights of the child must be entrusted to others capable of and interested in acting for him during his childhood.

3. It is the duty of parents to meet this responsibility for their own children.
4. It is the duty of the State to supplement and substitute for parental efforts whenever needed to further the best interests and welfare of the child.

BASIC LEGAL PROTECTION FOR CHILDREN

The laws of infancy and guardianship embody these concepts of public protection for children perhaps more comprehensively than other statutes. The law of infancy invests the child with the special legal status of a minor, to signify his right to and dependence upon others for general over-all protection. The law of guardianship supplies a basic legal method for providing this kind of protection for children.

That the two laws are complementary is brought out by the fact that the child subject to the provisions of the law of guardianship is described in terms of the status conferred upon him by the law of infancy. In the common phrase of the statutes, guardianship is provided the child "by reason of minority."

What minority means is made explicit in the laws in terms of an inclusive covering age and inherent attributes.

The age of minority is defined in terms of a legal age of majority. This is an arbitrarily fixed age at which it is conclusively presumed that, with certain exceptions, the immaturity of childhood ceases and the maturity of adulthood ensues. It has varied somewhat among countries and States. As Woerner points out:

> "Different nations and different States of the same nation have reached different conclusions as to the legal age of majority which shall most nearly coincide with the natural maturity of the individual. Thus the Roman law fixes the completion of the twenty-fifth year as the *major aetas* (majority); which, in respect to males, is followed by Spain and Holland. The common law of England fixes the age of twenty-one years for both sexes as the period of majority, which is followed in all the States of the Union as to males; but females are declared to be of full age at eighteen by the statutes of * * * [some States]. In the other States, either by express provision of statute, or in the absence of statutory provision by the common law, both sexes attain majority at the age of twenty-one years." [*23*, pp. 15-16]

In the States studied, the age of majority is 21 years both for males and for females, either under the common or civil law or by express statutory pro-

visions [*55*]. However, in all the States there are specific provisions in the law that permit minors to exercise discretion and assume responsibility in particular matters at various ages below the age of majority.

Some examples are the age at which minors may consent to adoption and guardianship, and the age at which they must assume responsibility for misdeeds and for supporting themselves.

Other examples are found in laws relating to under-age veterans, such as the servicemen's readjustment statutes of Louisiana and Missouri which deem veterans of full legal age to obtain loans, and the farm and home purchase statute of California which deems veterans of full legal age to purchase a farm or home [*56*].

It is also possible in all States to emancipate minors on an individual basis for particular or general purposes. This may be done by various methods.

One method is marriage. In California, marriage terminates the control of the minor's parents and, if the minor has a guardian, the guardianship. Also in California a female who is married and 18 years of age is deemed to be of the age of majority for certain purposes. In Louisiana and Michigan, marriage releases a minor from parental control. In Missouri, a minor married to an adult is deemed of age for the purpose of joining the adult spouse in certain real-estate transactions [*57*].

Another method of emancipation is by agreement between the child and the parents, expressed orally or in writing, or implied from the parents' conduct toward the child.

Still another is by notarial act. In Louisiana, the father or the surviving mother can emancipate a minor over 15 years of age by a written statement attested by a notary public, thereby conferring limited powers over the administration of the minor's estate [*58*].

In Louisiana also, and in Florida, court action may be taken to emancipate minors 18 years of age or older. In Louisiana the court action confers the power of estate administration upon the minor, while in Florida it removes all the disabilities of minority status [*59*].

MEANING OF MINORITY STATUS

While in minority status, the child is, as it were, under the general protection of the whole community and under the particular protection of the person legally responsible for him. He is subject to certain disabilities and is entitled to certain privileges.

Both the disabilities and the privileges of minority status are intended to

serve protective purposes. The disabilities restrain the child from exercising directly many rights and benefits to which he is entitled under the laws of the State and its democratic tradition, such as: to choose or change his residence, custody, care, education, employment, and form of religion; to enter into marriage or other contracts; to sue or defend himself or to appoint an agent or attorney to represent him; to receive and manage property or money belonging to him; to buy, sell, mortgage, lease, or otherwise engage in business transactions [*60*]. This restraint is not intended to deprive the child of his personal rights, but only to prevent him from damaging himself and his property by his own improvident acts or the fraud of others.

On the other hand, the privileges of minority status are intended to protect the child in positive ways by entitling him to—

1. A presumption of incapacity to commit certain acts or to behave responsibly in certain situations. The actual age of a minor brought into court because of behavior difficulties is one of the factors taken into consideration by the court in arriving at its decision.

2. Immunity from the consequences of actions taken during minority that are clearly not to his advantage. Such actions are considered voidable. The minor may disaffirm or repudiate them after he arrives at majority, and thereupon have restored to him what had been taken from him, or its value. This obviously applies only to property, as it is hardly possible for a child to recover a mismanaged childhood.

3. Special protection from the courts. Courts are impressed with the duty of actively protecting the rights of minors, whereas adults must protect their own rights. This is possible, however, only when the minor is brought to the attention of the court.

4. General guardianship, from his own parents or from legally constituted guardians.

The last-mentioned form of protection for minors is the particular concern of this study. Its historical roots and present statutory framework will be described in the chapter that follows.

2. The Legal Framework

The progress of a State may be measured by the extent to which it safeguards the rights of its children.
Grace Abbott, The Child and the State.

Guardianship is an old legal device for providing general over-all protection for children in minority status. According to Woerner:

> "Guardian, in the popular sense one who guards, preserves, or secures, is the generic term applied, in legal usage, to a person whose right and duty it is to protect the rights, whether of the person or property, of some other person, his ward, who, as in the case of minors, is conclusively presumed * * * to be incompetent to manage his affairs." [*23*, p. 39]

Guardianship stems from ancient conceptions of family organization, inheritance rights, and the powers of the State. Its use has varied historically with the varying social valuations placed on the child in different times and places. In English common law, it was first considered a profitable right of the guardian, and only gradually was converted into a duty beneficial to the child. Nowadays it is viewed as a trust relation.

FORMS OF GUARDIANSHIP

Historically there have been many more forms of guardianship than are in common use today. These will be described briefly, in order that the present provisions and problems of guardianship may be seen in better perspective,

The modern idea of guardianship is traceable to ancient Roman law, Napoleonic civil law, and feudal common law. The Roman law is essentially a concept of blood relationship. Guardianship represents a continuation of the power of the head of the family over his descendants (*patria podesta*). It took two forms, one called tutorship (*tutela impuberum*) and the other curatorship (*cura minorum*) [*46*].

Every child below the age of puberty, that is, 14 for boys and 12 for

girls, had to have a tutor to protect and assist him in doing things that he could not lawfully do by himself. Tutorship was conferred by various methods, by which it came to be known as statutory (*tutela legitima*), testamentary (*tutela testamentaria*), and magisterial (*tutela dativa*). The law described in detail those who could be appointed tutors, and prescribed their conduct and the liabilities they incurred, for tutorship was viewed as a public duty.

The child was supposed to come into full enjoyment of his personal and proprietary rights on the attainment of puberty. However, it was recognized that he would still need protection and assistance in the management of his affairs. Consequently, the law established a curatorship over him to extend from the age of puberty to the age of majority, which was fixed at 25 for both males and females. As time went on, the two forms of guardianship were combined, although the two terms have continued in use to the present day, as, for example, in the laws of Louisiana.

The Roman law of guardianship was the basis for the development of the civil code of Napoleon, which largely incorporated the ideas of tutorship and curatorship for minors. The civil code in turn became the basis of the laws of Louisiana and of certain guardianship provisions of several western States [*61*]. A vestige appears in the use of the term curator for the guardian of estate in Missouri law [*62*].

The law of guardianship of the other States of the Union derived from English common-law rules which grew out of the feudal law of the land with its system of land tenure. Unlike the comprehensive Roman law of guardianship, the English law was disjointed and incomplete. It provided some 10 kinds of guardianship, "yet it had never laid down any such rule as that there is or ought to be a guardian for every infant" [*18,* p. 444].

There was the father's guardianship *by nature* over the person of his heir apparent until the latter's twenty-first birthday, and his guardianship *for nurture* over the person of the younger children until the age of 14 years in the case of males and 16 years in the case of females.

On the death of the father, the type of guardianship depended very largely on the nature of the property left the child. By and large, the child without property was left to shift for himself.

Guardianship *in chivalry* consisted really of the right of the feudal lord to military service from his tenants. In lieu of the performance of such service by the heir apparent of a deceased tenant, the lord was allowed to assume custody of the person and to take the profits from the estate of the male heir under 21 years of age and of the female heir under 14 years of age. In addition, he could exercise the profitable right of selling the female minors into marriage.

There was also a guardianship *in socage* which involved obligations of the

heir under 14 years of age to pay rent or give services in lieu thereof to the landlord who became his guardian.

Other classes of guardianship known to the common law included guardianship by election of the infant, by prerogative, by appointment of ecclesiastical courts, by special custom, by testamentary appointment, by court appointment in a litigation, and by appointment of a chancery court.

Guardianship *by election* of the minor resulted from the minor's own choice of a guardian after he reached the age of 14 and desired a change for his guardian in socage or for nurture or found himself wholly unprovided with a guardian of person or estate.

Guardianship *by prerogative* was peculiar to the royal family. *Ecclesiastical* guardianship was the right of the ecclesiastical courts to appoint guardians of person and estate of minors who had personal property. Guardianship *by special custom* originated in the privilege of borough public officials, such as mayors or aldermen, of assuming guardianship over orphaned children or of committing them to persons selected by them.

Testamentary guardianship was authorized by a statute of the reign of Charles II [*63*] which also abolished the incidents of military and agricultural tenure including feudal wardship and marriage. It gave the father the right to dispose, by last will and testament, of the custody of the person or estate of the minor heir under 21 years of age after the father's death.

Guardianship *ad litem* was created when a child was involved in a court action either as defendant or plaintiff. It was limited to representing the child in court, and gave the guardian no rights to the custody of the child's person or estate.

Chancery guardianship represented the authority of the king's chancellor, and subsequently the authority of courts of equity jurisdiction, to appoint guardians of infants in situations coming to their attention. Chancery first exercised this authority in 1696 [*64*] in relation to children of property. In England, it was not until 1827 that the chancery power of protection over children was defined and extended to include children without means [*65*].

DEVELOPMENTS IN THE UNITED STATES

American colonies patterned their laws of guardianship on the English model of the times. But the provisions were generally of a simpler nature with respect both to the classes of guardians and to the procedures for appointing and supervising them. These provisions were generally carried into statehood. As new States were created, legislation concerning guardianship was usually among the first enacted. From time to time, the States adopted additional laws relating to guardianship, but these were primarily

concerned with veterans and their dependents or with changes in administrative details.

While it is outside the scope of this study to trace the legislative history of guardianship in general, or in particular reference to the States included in the study, it is noteworthy that one such study found that—

> "the only changes in guardianship laws for more than a century have been to recognize the rights of the mother in her children, to restrict the father's power of testamentary appointment, and to remove the disabilities for guardianship under which married women had suffered." [*21*, p. 25]

The effects of these changes were to give the mother joint guardianship rights with the father in her children; to make the testamentary appointment of a guardian a right of the last surviving parent, whether the father or the mother; and to make married women eligible for appointment as guardians.

Another study completed in 1946 found few changes of any real significance in the past decades.

> "Few fields of law have been neglected in recent decades as that of guardianship * * * on account of the recent dearth of legislative and scholarly development of the subject of guardianship, the *Model Probate Code* is necessarily a more nearly pioneer undertaking with regard to guardianship." [*66*].

As a consequence of this neglect, the guardianship laws are probably the most archaic laws relating to children on the statute books of the States. Examination of the laws of the States included in the study disclose inadequacies of structure as well as substance.

STRUCTURE OF GUARDIANSHIP LAW

It is difficult to analyze State guardianship laws, because there is no comprehensive and unified organization of the statutes relating to the subject in any of the States. Provisions relating to guardianship of children are incorporated in a scattering of laws.

General provisions for the appointment of guardians of the person, the estate, or both, are set forth in the Law of Guardian and Ward (called the Law of Tutorship in Louisiana). While children may acquire guardians of estate only under the provisions of this law, it is possible for them to acquire guardians of person under the provisions of a number of other laws, some of which may be at variance with if not in outright contradiction to others.

For instance, some laws provide for formal court consideration and approval of contemplated changes in guardianship; others do not. Where court action is provided, jurisdiction is usually scattered among different

courts, and recourse to the courts is mandatory in some cases but not in others. Furthermore, while some laws require social study of the necessity of the guardianship change and the fitness and suitability of the proposed guardian, others do not.

Among the laws which have the effect of changing guardianship of person are juvenile-court laws. Under some juvenile-court laws, the juvenile court may terminate parental guardianship, take the wardship of the child, and transfer the wardship temporarily or permanently to individuals, agencies, or institutions by commitment process.

Under adoption laws, adopting parents jointly are invested with guardianship of the adopted child. Adoption by a stepparent confers guardianship upon him jointly with the natural parent who is his spouse.

Laws of relinquishment allow a mother or father, or both, to place a child in the guardianship of a family desiring to adopt it, by surrendering the child directly to the family or to a social agency or institution which is to arrange the adoption.

Laws relating to social agencies and institutions empower them to accept guardianship of children temporarily or permanently. In some States the wards of social agencies and institutions may be returned to the guardianship of parents or others by administrative procedures not involving judicial sanction.

Laws relating to children born out of wedlock allow the father to become joint guardian with the mother by acknowledging the child or by marrying the mother.

Furthermore, it is generally presumed, under the doctrine of *in loco parentis,* embodied in various statutes, that a person who voluntarily takes a child into his home and treats him like his own, stands in the place of parents and thereby has guardianship in fact.

Because these various laws are not coordinated, confusion and uncertainty exist respecting the essential distinctions between them, their particular effects upon the legal status and relation of children, and their appropriate uses when the necessity of changing guardianship for a child arises.

Particular difficulties appear to be posed by the lack of clear distinction between the terms "guardianship" and "custody," which often seem to be used synonymously and equivalently, and also by the lack of distinction between "guardianship" and the term "wardship" as used in the juvenile-court laws. The question often raised in these connections is whether the transfer of custody and wardship through the juvenile court effects a full and complete transfer of guardianship rights, thus obviating the necessity of appointing a guardian through the procedure prescribed by the law of guardian and ward.

The law of guardian and ward, upon which this study is focused, presents special structural problems. One is with regard to nomenclature. The

meaning of the term "guardian" is often left in doubt because of the omission of the qualifying phrase "of person," or "of estate," or "of both person and estate."

Another problem is caused by the fact that the law is usually attached to probate law which deals with the administration of the estates of deceased persons. This is in the tradition of the law's original preoccupation with property matters and persons of property.

> "Under the classical common law, guardianship was an institution existing in regard to the propertied classes. Early English law had many different types of guardianship over children, but on the death of the father, the type of guardianship which resulted depended on the nature of the property. The law of guardianship dealt almost exclusively with heirs and except for litigations (in which case there were guardians *ad litem* to protect property rights) unpropertied children were substantially ignored." [*18*, p. 443]

Today, however, this connection has less relevancy in view of the broadened concern of the law with children who do not have property, and its emphasis upon the principle that the welfare of the child shall be the determining consideration in guardianship.

However, in view of its appendage to the law of probate, the specific provisions of the law of guardianship are concerned principally with property matters. Little attention is given to the person of the child. Almost none of the safeguards that have been recognized in child-welfare legislation as essential for the protection of children have been incorporated in the law of guardianship.

Still another problem is caused by the law's failure to distinguish the minor from the incompetent adult. Few provisions differentiate the situation and needs of the two groups. Most are generally applicable, to incompetent adults who have been adjudged insane, feebleminded, alcoholic, or spendthrift, as well as to children whose incompetence is in the matter of legal age.

CONTENT OF THE LAW

Under provisions of the Law of Guardian and Ward, the appointment of guardians of the person of minors is to be made whenever "necessary and convenient" in the event that parents are dead, incapacitated, or incompetent, or fail in their duty toward their children.

Guardians of the estate of minors are to be appointed whenever property in a specified amount is acquired by the child.

Three types of guardianship are provided, natural, testamentary, and judicial. Each involves a number of different plans with respect to the

object of the guardianship, the person who may be guardian, the mode of appointment, and the powers and duties conferred upon the guardian.

The three types are described briefly here.

Natural guardianship

To all practical intents and purposes, natural guardianship is but another term for the parent-and-child relation. It carries the same legal authority and responsibility for the person of the child. However, the term serves to emphasize several aspects of the relation.

The concept of natural guardianship implies that all forms of guardianship are in the nature of trust relations; hence, subject to termination at any time in the interest of the child and, in any event, terminating automatically when the child reaches the age of majority. In Hochheimer's view—

> "Even the natural guardians are legally considered the appointees of the government, the only difference, in this respect, between them and other guardians being that the latter are expressly appointed when the occasion for them arises or is expected to arise, while the former are appointed, as it were, by a general rule of law, or, as it is said, 'by the course of the law the wardship is cast upon them'. Even in their case, the law devolves the guardianship, not so much on account of their natural rights, as because the interests of the child and the good of the public will thereby be promoted * * *. No such thing as a 'vested right' therein is recognized in law." [*13*, p. 7-8]

Only in Connecticut, of the States studied, does the guardianship law serve to implement this concept of natural guardianship by providing for the termination of natural guardianship through a separate and formal proceeding in the court having guardianship jurisdiction [*67*].

In the other States, the termination of natural guardianship may be a separate proceeding in another court, or another division of the court, or may follow from court sanction of relinquishment, from adoption decrees, or from juvenile-court determinations with respect to abandonment, desertion, or neglect, of children.

The concept of natural guardianship also emphasizes the principle that the parents have no inherent rights in regard to their child's property. The laws of all the States in the study, except Louisiana, specifically prohibit parents from taking control of a child's property unless authorized to do so by a court of guardianship jurisdiction.

In Michigan the prohibition extends to all property, but in the other four States there are various exemptions. Thus, Missouri exempts property valued under $100 but permits parents to have control over property that they themselves have settled upon the child.

Connecticut exempted property valued under $100 until 1947, when the exemption was raised to property not exceeding $500 in value.

Florida exempts property valued under $500 which does not consist of real estate, but in case of personal injury or other tort claim the amount may not exceed $100.

In California, parents may receive up to $500 on behalf of the child but they must sign a written assurance verified by oath that the total estate of the child does not exceed $1,000 in value. They may also with court approval compromise claims for the child and collect settlements up to $2,000 [*68*]

> A unique feature of the California law is tne limitation placed upon the parents' right to the child's earnings. The law requires parents to set aside in a trust or savings fund at least half the net earnings of child actors. [*69*]

On the other hand, the laws of Louisiana permit parents to enjoy the child's property during his minority (by right of usufruct) and to administer it without the necessity of guardianship. However, the parents must file an inventory of the child's property prepared under supervision of an undertutor appointed by the court to act as a "watchdog" over the parents' handling of the child's property. Special undertutors must be appointed whenever the sale or lease of real property belonging to the child is contemplated. [*70*]

In all the six States, natural guardianship devolves only upon the child's parents, on the general theory that their love and interest is sufficient assurance that they will protect his rights adequately. [*71*]

It extends equally to all the children born to the parents in wedlock. It carries equal and joint responsibility for the father and the mother except in Louisiana where, in the event of differences between them, the authority of the father prevails. [*72*]

When one parent dies, the surviving parent becomes sole natural guardian [*71*]. In Louisiana, however, if the mother remarries, continuation of her natural rights in the child must be approved by a family meeting composed of relatives or friends of the father [*73*].

In all the six States except Michigan, the mother is designated sole natural guardian of the child born out of wedlock. Michigan law implies the mother's sole right to the guardianship of such a child in statutes governing adoption. [*74*]

Testamentary guardianship

Unless terminated earlier by court action, natural guardianship ends with the death of the last surviving parent, and the need for legal guardianship is presumed to ensue.

> "* * * none but the natural parents can be guardians by nature; next of kin succeed, on the death of the parents, to such authority only as may be involved in their status *in loco parentis.*" [*23,* p. 55]

However, all six States authorize parents to provide for the guardianship of their children after their death by last will and testament. Until the law was changed in 1945 Florida allowed parents to deed away their children during their lifetime. California law permits the use of deeds, but specifies that a deed does not take effect until the death of the parent. [*75*]

The person named guardian by will is called a testamentary guardian. He may be designated to act in relation to the child's person or property or both. Generally he is presumed to have the same rights over the child as the parents had unless there are explicit limitations imposed by the instrument appointing him. But, unlike the parent, and like other guardians, the testamentary guardian is not obligated to support the ward except from the latter's own estate.

There is a curious contradiction in the law which grants parents power to control their children's estates after death by naming the guardian of estate in their will, while prohibiting them from exercising such control directly in their lifetime without court appointment.

The power of testamentary appointment is vested by the laws of five States in the surviving parent [*76*]. California permits either parent to make a testamentary appointment [*77*].

Two States, California and Louisiana, require court confirmation of the testamentary guardian [*78*]; two others, Connecticut and Missouri, require the testamentary guardian to qualify by posting bond [*79*]; and of the two remaining States, Michigan has no qualifying requirement but Florida requires such guardians to be subject to the provisions of law in the same manner as other guardians [*80*].

Judicial guardianship

Judicial guardians are sometimes called general guardians in recognition of their all-around authority, or probate guardians as their appointment is made by a court of probate jurisdiction. The laws of all six States provide for three plans of judicial guardianship. The first relates to the person of the minor, the second to his estate, and the third to both his person and his estate.

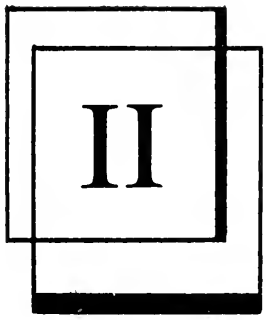
There is another plan in use providing minors with guardians *ad litem* in connection with their appearance as a party in a court proceeding. Since these appointments are temporary in nature and do not involve the broad authority and responsibility of the other plans, they will not be given special treatment in this report.

It is of interest to note, however, that guardians *ad litem* are sometimes appointed to supervise certain actions of the general guardian, such as selling

real estate, or to represent the minor at hearings on the accounts and settlements made with the general guardian

The term tutor is used in Louisiana in lieu of guardian. In Missouri, the guardian of estate is called a curator. [*81*]

The powers, duties, and functions of guardians of person and of estate are regulated by statutes. These will be examined in part III of this report. The section that follows, part II, describes the guardian-and-ward relation in typical situations, and the characteristics of guardians and wards who entered into or ended their relationship during 1945, in the communities included in this study.



Guardian and Ward

3. The Relation of Guardian and Ward

Guardianship establishes a relation which may well affect the whole life of a child. It may entrust his person or his property, or both, to a person totally unrelated to him. Or it may create for him a closer relation to a person already related to him by birth. In either event, it confers upon the child the new legal status of ward of the person appointed his guardian.

NATURE OF GUARDIANSHIP

The significance of the child's status as a ward is seen from the fact that, when the guardianship is over his person, he is placed in a relation to the guardian approximating that of child to parent. Like the parent, the guardian becomes responsible for the care, custody, and control of the child, and is clothed with power to make important decisions and arrangements respecting his well-being, such as those concerning medical care, adoption, employment, marriage, and entry into the armed forces.

There are some important differences, however, between guardians of

the person and parents. These stem from the fact that, firstly, guardianship is lawfully effective only for the period of the ward's minority. Secondly, it is subject to continuing supervision from the court. Thirdly, it does not involve the duty to support and educate the ward except from his own estate; nor does it involve the right to the ward's earnings and services. Finally, it does not take away the child's right to inherit from his own parents, nor does it give him the right to inherit from the guardian.

Under direction of the court, the guardian of the person has wide discretion, to make plans for the ward, to arrange his care, education, training, and treatment, to regulate his behavior, and to assert his rights to services and benefits provided by the law. He may take the ward into his own home or place him in foster care, but may not change his domicile without court approval if such a change would remove the ward from the jurisdiction of the court.

But, like the parent, the guardian of person has no right to receive and manage property belonging to his ward. When the ward acquires property in an amount and of a kind described by law as requiring guardianship, a guardian of estate must be appointed. Because the same person is frequently appointed to serve in both capacities, the powers and duties of the office of guardian of estate are often confused with those of the guardian of the person.

The guardian of estate has no right, however, to interfere in the personal affairs of the minor, but must confine his activities to the "prudent and economical" management of the estate entrusted to him. His handling of estate matters is subject to orders of the court, and to periodic accounting.

GUARDIANSHIP CASES

A group of 67 guardianships for special study were selected at random from cases active with the courts of study during 1945. These cases reveal many confusions and difficulties in the relation of guardian and ward. Some might have been avoided by a more careful selection of the guardian; others by better interpretation of what is involved in guardianship; and still others by more definite follow-up of appointments, to provide guardians the advice and guidance needed to make their functioning more effective.

Meaning of guardianship

The cases studied indicate that the relation of guardian and ward is often confused and conflicted because a clear definition or understanding of

its meaning, purpose, or responsibilities is rarely given the parties to it. So far as could be learned, the courts in most instances had not explained the office or provided instructions for the guardian to go by. In consequence, some guardians appeared to have distinctly individual conceptions of their job, and some of these were definitely misconceptions.

Inability to distinguish clearly between guardianship of person and guardianship of estate appeared to be a common source of misunderstanding and difficulty.

In one case a parent and a guardian of estate appeared to be confused with respect to their individual rights in the child.

> The child had lived with her aunt since her mother had been killed in an automobile accident when the child was 3 months old. The father lived in the same home for 3 years, then remarried and established a home with his second wife. He decided to leave the child with the aunt because he felt it would be unwise to subject so young a child to a complete change of homes.
>
> The aunt had broached the question of adoption on several occasions, but the father had not wanted that. He continued to have considerable contact with the child.
>
> The guardianship action was precipitated a year ago by the fact that the child inherited a small estate from her grandmother. The father thought that the aunt was entitled to handle this money without any supervision from him and therefore willingly waived his own appointment in favor of the aunt. However, he proceeded with the guardianship plan with some trepidation, for fear it might be misconstrued to mean that he was giving up the child.
>
> He is now inclined to regret the action, as he thinks it has weakened his hold on the child and placed him in the light of not wanting to take responsibility for her.
>
> On the other hand, though the aunt recognizes that the guardianship is related to the child's estate, she believes it strengthens her custody rights to the child and gives her the right to refuse to surrender the child in the event the father should try to take her.

One guardian of estate was unaware of the difference between guardianship of person and guardianship of estate to the extent of becoming heavily involved in planning and supervising the care, work, and recreation of his ward.

> The guardian stated that he takes considerable responsibility for his ward's social welfare, and indicated that the custodian never makes a decision without consulting him. The ward, a 17-year-old boy, lives with relatives, as his mother is dead and his father is in a mental institution. He seemed very shy and insecure and, though convinced of the devotion of the guardian, somewhat intimidated by him.

In the case of another guardian of estate:

> The guardian said that he feels that he has a real responsibility to see that the child's money is spent wisely, especially as it consists of monthly government

benefits. Consequently, he tries to visit the home of his ward about twice a month, and closely supervises the mother's expenditures for food by requiring a detailed itemization of all purchases. He buys the ward's clothing himself. He spoke of the resentment that the family felt towards him, but did not seem to be concerned about it.

On the other hand, some guardians of estate appeared to detach themselves from the wards' personal affairs so completely that they never even see the children. This was especially true of bank trust officers acting as guardians of estate. One trust officer explained that he tries to avoid becoming involved in the ward's personal affairs because he has found such involvement troublesome, difficult, and personally embarrassing.

Some individuals serving as guardians of estate evidenced the same attitude as bank trust officers. They saw their job as related strictly to the estate.

This was true of a number of guardians responsible for benefit funds. In some of these cases the sole activities of the guardian seemed to consist of receiving the benefit checks, forwarding them to the child's custodian after deducting the fee, and filing the required annual reports. In a number of cases, the smallness of the fees caused resentment. A lawyer serving as guardian of estate for a number of veterans' children intimated that he accepted the appointments as a "duty of charity."

He supposed he was asked to take the appointments because the agency could not get anyone else. He said he did what he was supposed to do—issue checks and make reports—and was not interested in anything else. He thought entirely too much was expected of him for the "mere pittance" paid him as a fee.

Confusion and conflict arose in guardianships of person either because the validity of the appointment was at issue, the superior rights of the guardian were not understood in dealing with the interference of inadequate parents, or the guardian was not fully aware of the responsibilities of guardianship or completely willing to accept them. In the following case, the guardianship failed to protect a child from an interfering parent.

Rosella, aged 10, had lived with an aunt since she was 2 months old. Ever since then there had been continual struggle between the mother and the aunt because of the mother's vacillating feelings about the child. Within Rosella's lifetime, the mother had lived with a succession of men and had married three times. The man whose name Rosella bears married the mother to give the child a name, although he was not the father.

Until the guardianship, Rosella had not lived with her aunt or with her mother for more than a few months at a time, as the mother kept taking her back and returning her.

The last time Rosella was brought to the aunt's home, she was dirty, in rags, hungry, and worn out from having to sit up with her mother and stepfather in beer gardens. Yet within a few weeks the aunt was able to get her into school regularly and have her do passing work.

When the mother began to threaten to leave her husband and intimated that she would want to set up house with Rosella, the aunt decided to file for guard-

ianship to prevent the mother from taking Rosella from her again. The petition was approved although the mother failed to appear in court in response to the notice of hearing.

A little later the mother filed a petition for the revocation of the guardianship on the grounds that the appointing court had no jurisdiction since the mother had obtained custody of the child from the circuit court of another county, in which she had divorced the man for whom Rosella is named. When the latter court waived jurisdiction, the mother's lawyer contended that it could do so only to the probate court of the same county.

While this legal struggle was going on, the mother kidnapped Rosella from school but returned her at the insistence of her lawyer. Rosella was badly upset by the experience and was very unhappy afterwards in the guardian's home because the mother had told her that the guardian intended to put her in an institution.

Rosella asked to be returned to her mother. On the advice of a psychiatrist, she was allowed to go back to her mother, because it was believed that the situation would not last long and that she would then return freely to the guardian.

In another case of guardianship of person, the guardian was disturbed because the ward interpreted the appointment to mean that she had taken over complete legal responsibility for him, whereas her intention was merely to help him with a special matter requiring legal consent

The boy came to live with her when he was a baby, 13 years ago. She had heard through an acquaintance that his mother was looking for a place where she could leave him when she went out to work. She offered to take care of him because she was lonesome and liked having a child in the house. He has been with her ever since without any legal arrangement, although an unspoken understanding grew up that she would raise him. When time came to enter him in school, he was registered with the foster mother's name.

Recently the boy decided to join a youth organization. He was advised that his application could not be accepted without the signature of a parent or legal guardian. The foster mother agreed to take out guardianship so as to be able to sign the application. The boy has apparently attributed great significance to the letters of guardianship for he has told the guardian that he now feels that he really belongs to her.

Quality of the relation

In many instances the guardianship served to establish or strengthen an atmosphere of affection, security, and recognition for the child, while providing him with necessary guidance and supervision for personal growth and development and with necessary protection for his belongings.

In a number of cases the guardianship helped the child overcome severe emotional shocks.

The mother had always been a heavy drinker, and since the father entered the service she had embarked on a continual round of drinking and liaisons with

men. Cathy would be left at her aunt's whenever it was not convenient for the mother to have her around.

As Cathy evidenced increasingly serious signs of emotional disturbance, the aunt petitioned for the removal of the parents as natural guardians, in the interest of the child. She offered to accept guardianship. The father forwarded his consent, but the mother made no acknowledgment of the court notice nor did she appear at the hearing.

In the year and a half that Cathy has been under guardianship she has lived in the home of her guardian. Although there are signs that she has not completely recovered from her emotional experiences (she still walks and screams in her sleep), neighbors say she acts like a happier and more serene child. They commented especially on the fact that she is freer in talking with them and is widening the range of her friendships with children of her own age.

In other cases the guardianship served to make up for neglect.

The guardian, grandmother of the children, had periodically cared for them from the time of their father's death. When the children were 7 and 12 years of age they were living in a maternal aunt's home. The grandmother knew they were receiving most inadequate care because the mother was a heavy drinker and away from home a good part of the time and the aunt worked during the day. She decided to report the case to the juvenile court because she believed the court might succeed in impressing the mother with her responsibilities.

The court advised her that neither the mother nor the aunt ought to care for the children and suggested that she take them. The grandmother did not hesitate to say that she was initially unwilling to do this. She felt that she was entitled to enjoy the comfort and freedom from responsibility that she had achieved at this advanced time of her life. However, realizing that the children would probably continue to suffer neglect if returned to their mother, she agreed to take them.

The probation officer arranged the guardianship for her as a legal protection against possible interference from the mother and to enable her to receive veteran's and social-security benefit payments to which the children were entitled.

Now, more than a year after the children came into her home, the guardian is still sometimes weary of the burden, but finds sufficient satisfaction in the obviously improved condition of the children and the love they bear her.

In still another case the guardianship preserved family unity by preventing the separation of orphaned children.

The guardian is a very thin, tired-looking woman who appears considerably older than her 34 years. She refers freely to her tension and nervousness and to the fact that she finds the responsibility of guardianship overwhelming.

She talked nostalgically of the small home which she and her husband had to themselves and which they gave up after her parents' death in order to move into the parent home to care for her younger brothers and sisters.

The guardian's expression of her many difficulties in maintaining a large household flowed with the ease of oft-repeated words, and it was apparent that the children, who were present during part of the interview, were both accustomed to and undisturbed by these expressions.

It is as if the guardian releases her feelings by this constant expression of them, because there is no doubt that, for all her complaints, she accepts the idea that she must carry this responsibility. Even though an older sister offered to take one of the younger boys she did not agree because she did not want to

separate the children. In spite of her tension over the burden of her responsibility, her real love and concern for the children has given them a secure and stable family life.

In one case, however, guardianship over a brother and sister evidenced partiality for one of the children whom the guardian really wanted.

The Chesters assumed personal guardianship of their orphaned niece and nephew. A separate guardian of estate was appointed to manage the children's inheritance.

There is a striking difference between Mrs. Chester's attitude toward Priscilla and her attitude toward Henry. She talks with great warmth and affection for Priscilla, who is 3 years old, and freely discusses her negative feelings towards Henry, aged 14.

She said that she and her husband cannot wait for the time when Henry will be old enough to go out on his own and they can then be alone with the little girl. She appears, however, to accept the idea that Henry is a necessary part of the responsibility she has undertaken with these children, and she will "do her duty by him."

Although the Chesters intended to adopt Priscilla, they apparently have hesitated to take any steps, because they are not ready to assume financial responsibility for the child. They are frugal people and apparently can see no greater benefit to the child at this time in adoption but see a distinct disadvantage to themselves in the loss of the money they are receiving for her care.

Priscilla appears to be a happy, well-adjusted child who is very much wanted and loved by the Chesters. Henry, on the other hand, shows his unhappiness in an aggressive manner. He was reported to be getting only passing grades in school and at times has been a behavior problem.

In a number of cases where the child was not living with his guardian, a warm and responsive relation nevertheless developed.

After the mother died, the maternal grandparents took George and Bill into their home to care for them. To prevent the divorced father from interfering with this plan, the family decided that guardianship should be taken out for the children. As the grandparents were old and might not live through the minority of the children, it was decided that an uncle should be appointed guardian.

The children continue to live with the grandparents, but there is frequent visiting between the wards and their guardian, to whom they look for counsel and advice in matters that they feel they cannot discuss with their grandparents.

All concerned are obviously satisfied with the guardianship and are confident that it will protect the children in the event that the father tries to interfere with their care.

In another case a brother and sister were drawn into a close relation of mutual respect and trust when the brother became guardian of the sister's person and estate.

Although he never had any hesitancy about assuming this responsibility, he did worry at first about how it was going to work out, because he really did not know his sister at the time of the appointment. He had been away from home for more than 10 years, at college or in military service.

He has started Edith on a college education. As the estate consisted of insurance money left by the father, Joseph arranged with the insurance company to disburse the funds in monthly installments so that the payments would cover the schooling period. He is glad he made this arrangement because, though Edith seems to be developing "a better sense of values," he does not think she is yet sufficiently mature in these matters to handle large sums.

At first, Joseph deposited each month's insurance check in his sister's checking account. He found, though, that this system did not work because she ran through the money before the month was up and sometimes spent it unwisely. He has since decided to give her money as she needs it and thereby supervise her expenditures more closely.

Joseph makes it a practice to explain to Edith every action he takes in connection with the estate. They also discuss her personal affairs and he attempts to guide and advise her as necessary. He rarely has to exercise his authority, but said he will not hesitate to do so if he thinks that it is in her interest. As an example, he mentioned the fact that he induced her to have a tonsillectomy this summer although she did not want it.

In the main, they have had very few differences, because Edith does not hesitate to consult him and is reasonable about taking his advice. He considers himself fortunate in this, because in the light of the many years in which they had been separated, he thought, the strangeness between them might have become an insurmountable barrier.

In a contrasting case, guardianship of estate created many points of conflict in what was formerly a fairly harmonious sisterly relation.

Georgia had been living in her married sister's home for several months before her accident. She had not paid board, but her sister considered that she earned her keep by helping to supervise the five young children in the household.

Georgia lost an arm in an industrial accident and was awarded several thousand dollars as a settlement. She persuaded her sister to become guardian of her estate. Ever since that time the sisters have been at odds over one thing or another. Georgia explosively accused her sister of keeping her money from her and threatened to get married to terminate the guardianship.

Helen, in turn, disapproved of Georgia's boy friend, who she thought was after Georgia's money and was influencing her to drink heavily. Recently Georgia went to court to secure approval for withdrawing $200 for a trousseau. The court wrote Helen that she could make this withdrawal. The letter resulted in a bitter quarrel that prompted Georgia to leave her sister's apartment and take up residence in the home of her boy friend.

In a case where a relative took two children into her home after the parents died suddenly, tensions and conflict developed, when it became necessary for the guardian to go away for her health, and the children were placed temporarily in foster care.

When her young nieces were orphaned by the sudden deaths of their parents several months apart, she was the only relative who was willing to assume responsibility for their care and for the administration of their estates. From the standpoint of money, little was involved, but the care of the children was a heavy burden. The girls had been entirely dependent on the small aid-to-dependent-children allowance that the mother had received.

The strain of the deaths and of caring for the orphans brought the guardian close to a nervous breakdown. Her physician ordered her to go away for a rest, and she decided to visit with a son in the West. She placed the girls in an institution, which placed out the older girl in a home where she was allowed to work for her keep.

The guardian was away several months. When she returned she was accused of deserting the girls because she had not made any payment for the care of the younger girl although she was receiving public assistance for this purpose.

Furthermore, the older girl, who was dissatisfied with her placement, accused her of misusing the estate money.

Feeling discouraged and tired of these attacks, the guardian decided to resign. She filed a final account with the court, which was not accepted because it showed unauthorized expenditures for which the guardian was unable to present vouchers.

In the meantime, the older girl has returned to live with the guardian, and the guardian notified the institution that she was ready to take back the younger girl. The older girl, now 16, was seen during the visit. She frankly acknowledged that all her accusations against the guardian were due to a period of being uncertain about who was interested in her. She believes the experience in another home has helped her to understand things better and to see more clearly what the guardian has been up against.

Guardian functions

Many guardians given responsibility for both the person and the property of a child are known by the courts to confine their activities to the estate. Interview with some guardians carrying both types of responsibility indicated either an unawareness of responsibility for the ward's person or an unwillingness to assume it.

It was apparent in many other cases that the guardianship often demanded from the guardian not only understanding and interest but considerable time and skill and sometimes even financial help. In the cases studied the ward's situation made various demands upon the guardian.

The children needed guardianship because of the loss of both parents and the inheritance of a large estate. The father had died a year before the mother. Mrs. Dexter had been a close friend of the family, and had spent many hours in the home. Before the mother went to the hospital for a serious operation, she discussed with Mrs. Dexter the question of the latter's assuming guardianship over the children if it became necessary. Mrs. Dexter admitted that she had no clear idea then of what was involved in guardianship but thought it best to give the mother the assurance that she would stand by the children. The mother made out a will naming Mrs. Dexter the children's guardian of person. Mrs. Dexter moved into the home to care for the children.

When her appointment came before the court for approval, it seemed to Mrs. Dexter that the court showed a lack of concern for the children by approving her appointment without asking any questions about her competence and suitability to act as guardian of person for two young and wealthy children.

Mrs. Dexter indicated that she had some real doubts in her own mind. She

would have liked to talk them over with someone at the court qualified to advise and help her, but the court showed no interest.

To clarify things in her own mind, Mrs. Dexter took careful stock of herself. Her love for the children seemed to be a definite advantage. And she was not afraid of new challenges. She had successfully met a somewhat similar crisis in the lives of her own children who had lost their father while in their early teens. She had then taken a job and managed not only to support them but to put them through college. Finally, since her own children were now adults, she found that she openly welcomed the challenge of helping two young children to grow up happily.

Several negative factors also came to mind. One was the absence of a man in the house. Mrs. Dexter decided that this was not of serious importance since her son would be coming home week ends and he seemed very fond of the children. Another possible objection was the fact that she is not related to the children and there are living close relatives. This objection seemed largely academic, however, in view of the fact that the relatives had not been as close to the family as she and, moreover, had approved her appointment.

In approaching her new task Mrs. Dexter had decided that it was most important to concentrate on developing a happy relation with the children. She found this to be easy with Margaret, aged 5, who was too young to have suffered great shock at the death of her parents. Betty, now aged 8, was, however, at first inclined to brood and withdraw into herself. Mrs. Dexter found Betty gradually responding to her.

An important contributing factor in bringing the children around, she feels, was the presence of the family housekeeper in the house during the period when most of her energy needed to be devoted to building good relations with the children. At the present time the housekeeper is on a vacation, but the guardian is now quite able to handle the household duties in addition to looking after the children.

In another testamentary guardianship, the guardian felt that the fact that the wards were not living with him had handicapped his attempts to deal with their problems.

The father's will had named him guardian of both the person and the estate of the two boys. He had become acquainted with the father in connection with his duties as trust officer of a local bank. The boys had visited him often at the bank and seemed to enjoy talking things over with him.

According to the guardian, the parents were constantly at odds and the children were the subject of continual quarreling in the home. Before the father's death there had been a divorce and the father had received custody of both boys.

The mother, the children, and other relatives, consented in writing to his appointment as testamentary guardian of person and estate. He seriously considered taking the children into his own home, but was not certain that he and his wife, who were both elderly, could care for two growing boys and cope with their problems, especially as the younger boy was showing many behavior problems.

He finally decided to let the mother have custody of the boys. However, they truanted and ran away so often that he was kept busy finding suitable boarding schools for them and getting the younger boy out of one scrape after another. His experience in attempting to deal with these problems while the boys lived

with the mother or at boarding school convinced him that it would have been wiser to take the boys into his home.

A number of guardians voluntarily assumed financial responsibility for their wards. A guardian of a small insurance estate pays the college expenses of her ward.

Jean is a sophomore in college, where she is preparing herself for teaching. She would like to help pay her own expenses, but is not able to do any work after school because of her asthma.

Her guardian, an aunt, takes care of her tuition and living expenses at college, although the financial strain is heavy. However, she feels that Jean should have the chance to become self-supporting, and is determined to keep her estate intact to get her started in teaching.

In some cases the guardian assumed heavy responsibilities in connection with the medical care of the ward.

Guardianship was arranged for Richard for medical reasons. He needed hospitalization from time to time, but his mother was not always available to give the necessary legal consent. At the suggestion of the local public welfare agency, the boy's grandmother was appointed guardian.

Since the appointment, the guardian has faithfully taken Richard to a clinic in another city once a week so that he could receive proper psychiatric treatment for his epileptic condition. She has acquired a great deal of psychological understanding of the boy's condition, which is enabling her to keep him out of situations that might aggravate his condition.

A mother who served as guardian of estate used the guardianship to educate the child in money matters.

Jane's father and mother petitioned the court to appoint them joint guardians of the small amount of money settled on Jane after she was injured by an automobile. The mother stated that joint guardianship was desired because there were interfering relatives on both sides of the family and it seemed better protection to have joint guardianship in case one of the parents died.

The mother was the active guardian throughout the 14 years that the guardianship lasted. The father died shortly after the appointment. The mother stated that, as in other things, she talked over money matters with the child as early as she could understand them. Whenever it became necessary to withdraw money, the mother and daughter discussed the need and worked together on the petition to the court.

Every year, whether there had been expenditures or not, the mother prepared an annual account and explained the entries to her daughter. Although the court did not request the account, the mother filed it with the court and insisted that the clerk go over it with her and her daughter. The mother felt that it was a function that the court should carry out for the protection of the child and felt it was her duty as a responsible guardian to submit regular accounts.

Jane expressed great pride in the responsibility her mother had assumed throughout the guardianship and felt that the experience of participating in the planning of expenses and the preparation of accounts had been invaluable.

In several instances there were expressions of need for help in planning for the care, education, and welfare of wards.

> The mother said the guardianship had been a constant source of worry because she was not sure that she was making the wisest expenditures. Her chief anxiety was related to her desire to save enough of the estate to put her son through college. She also wanted the boy to have the feeling that she had handled his estate wisely. She thought the court should provide some person with whom she could discuss her problems.

In another case two children were receiving veteran's benefits through the guardianship of an attorney. The children lived with their stepmother.

> The stepmother stated that she had wanted to talk with someone about planning for the boy's future but that the guardian was always so busy with his law practice that it was not possible to get into his office to see him. She feels that "guardians for poor people should be people who have time to give."

4. Children Granted Guardians

To what extent are courts petitioned to appoint guardians of minors? Under what circumstances? What types of guardianship are provided? Who are the children concerned? And who are the guardians? The following discussion is pointed to answering these questions on the basis of an analysis of the petitions for the appointment and discharge of guardians filed during 1945 with the 12 courts in the study.

CHILDREN NEEDING GUARDIANSHIP

It would help, to see the significance of this information, to know how many children need guardianship, in the communities served by these courts. Unfortunately, this information is not available, with regard either to personal guardians or to estate guardians. For no community officially identifies and registers these needs.

Official census figures suggest the probability that there are large numbers of children needing attention with reference to their personal guardianship. The six States in the study reported for 1940 a total of 7,404,099 children in ages normally requiring guardianship, that is, the ages under 21. These children constituted more than a third (33.8 percent) of the total population of the States. They bulked somewhat smaller in two States, 29.3 percent in California and 32.2 percent in Connecticut, but larger in the other four States, 33.9 percent in Missouri, 35.8 percent in Florida and Michigan, and 41.8 percent in Louisiana.

The great mass of these children are shown to be living in their own homes, where they are presumably under parental guardianship. However, 789,995 are shown as living outside the parental homes, not counting the married children reported to have set up house with their spouses.

It is with this group of separated children, who comprise more than a tenth (10.7 percent) of the child population of the study States, that the problem of legal guardianship of the person lies. Probably for many there

is available a parent, or even both parents, to exercise guardianship, and the separation is only temporary. But very probably for many more the parents' death, incompetence, indifference, or legal separation or divorce, or the child's own mental, physical, or emotional inadequacy, necessitates the separate living arrangement.

Significantly, 248,209, or nearly a third (31.4 percent), of the children separated from parents were reported to be living in nonrelative homes, either with private families as lodgers, servants, or hired hands, or outside private homes in institutions and the like. This number included 24,609 children under 5 years of age.

The individual States show some variations in this picture: In Connecticut, 48,748 or 8.9 percent of the child population were reported living away from the parents; in Florida, 101,830 or 15.0 percent; in Michigan, 168,723 or 9.0 percent; in Missouri, 130,868 or 10.2 percent; in Louisiana, 132,105 or 13.4 percent; and in California, 207,721 or 10.3 percent.

Of the children living away from parents, in the individual States, the following numbers and proportions were shown living with nonrelatives: 17,879 or 36.7 percent in Connecticut; 28,602 or 28.1 percent in Florida; 57,957 or 34.4 percent in Michigan; 39,279 or 30.0 percent in Missouri; 23,748 or 18.0 percent in Louisiana; and 80,744 or 38.9 percent in California.

Comparable figures for the particular localities included in the study are not shown in the census reports. But if each State's proportion of separations were applied to the total of 1,342,283 children in the population of the study communities, possibly as many as 141,839 children would be considered as needing attention with reference to their personal guardianship.

How many have actually come before the courts is not known, as no court of study was found to keep a count of currently active guardianships, and estimates were not possible from the inadequate court records. It is significant to note, however, that only 1,450 children were provided guardians of person during 1945 by the 12 courts in the study. This is a ratio of 10.8 per 10,000 of the population under 21 years of age.

The rates for individual communities varied without any apparent consistency within States or within population classes. The rates for the two communities of Louisiana were in closest correspondence, being 10.2 for East Baton Rouge district and 8.8 for Caddo district, while those of Florida were widest apart, being 4.5 for Alachua County and 0 for Duval County, where no guardians of the person were appointed in 1945.

When grouped in population classes, the communities show the following extremes: Among those under 50,000 in population, rates vary from 3.7 in Greenwich, Connecticut, to 9.1 in Cole County, Missouri; those in the 50,000-to-250,000 population class vary from 0 in Duval County, Florida, to 17.4 in Sacramento County, California; while those with populations of

250,000 or more vary from 7.3 in Jackson County, Missouri, to 13.3 in Los Angeles County, California.

CHILDREN BEFORE THE COURTS

A total of 4,093 petitions were filed during 1945 with the 12 courts in the study. These petitions brought 4,014 different children before the courts in regard to their legal guardianship.

More than half the children, 2,137, came to the attention of the two courts of California. These courts serve nearly 43 percent of the State's total population, including more than 815,000 children.

Re-petitions

There were 79 children who were before the courts more than once during the year. Each court of study reported some re-petitions. For the most part these included counterclaims for appointment by opposing candidates, and amendments of the original petition to extend the guardianship from only the person or the estate to both the person and the estate. Still others were for the appointment of a successor guardian, because of the resignation, death, or removal of the guardian appointed earlier in the year.

> In one case a 14-year-old boy requested the revocation of a relative's appointment and reinstatement of the father who earlier in the year had been adjudged unfit.
>
> In another case a mother who had won sole guardianship of a child by a former marriage subsequently petitioned the court to appoint the stepfather coguardian.

No child was involved in more than two petitions during the year. However, five petitions had been filed in the case of a 13-year-old child actor in a space of 3 years. The first three related to his estate and resulted in the appointment first of the mother, then the grandmother, and finally a bank. The last two related to his person, with the father first being named sole guardian, and then the mother. There was no information in the record to explain the necessity for these changes.

Purpose of petitions

Of the total petitions, 3,243 were filed for the purpose of having a guardian appointed and 850 for having a guardian discharged.

What the courts did with them is described below.

DISPOSITION OF CASES

Table 3 shows that the courts completed action in all but a small group of cases by the end of the year—all petitions for discharge of guardian were disposed of, while 201 appointment petitions were pending. Of these latter, 165 were still pending at the time of visit, which for individual courts varied from 6 to 11 months after the close of the year.

Table 3.—Court Action in Guardianship Cases: Disposition of petitions for appointment and discharge of guardians of minors before 12 courts in 1945, by population of areas served by courts

Court action	Courts serving populations of—											
	Total		500,000 and more		250,000 to 499,999		100,000 to 249,999		50,000 to 99,999		Under 50,000	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Number of courts.	12		1		1		5		2		3	
Total. .	4,093	100	2,026	100	350	100	1,357	100	281	100	79	100
Appointments.	3,243	79	1,596	79	258	74	1,104	81	228	81	57	72
Consummated.	2,957	72	1,413	70	258	74	1,032	76	205	73	49	62
Dismissed	84	2	66	3	0	.....	17	1	1	(1)	0	.....
Pending. .	201	5	116	6	0	.....	55	4	22	8	8	10
Waived. .	1	(1)	1	(1)	0	.....	0	.....	0	.....	0	.....
Discharges	850	21	430	21	92	26	253	19	53	19	22	28
Consummated.	850	21	430	21	92	26	253	19	53	19	22	28

[1] Less than 0.5 percent.

Pending cases

The pending cases belonged to seven courts in four States. The large metropolitan court of Los Angeles County accounted for nearly 60 percent of the total.

The reason for the pendency of cases was found to vary with the type

of guardianship. In estate guardianships, it was mostly related to the prospective guardian's failure to post sufficient bond. In personal guardianships, delays were attributed chiefly to the inability of contending petitioners to agree upon a suitable appointment.

At the time of visit some cases had been pending for more than a year. These were in courts which did not have a definite policy for closing out pending cases after a fixed time lapse. No court was found to follow up pending cases systematically. The general policy was to leave further action to the initiative of the petitioner or other persons who might be interested in the child.

Despite the fact that a number of the pending cases indicated the presence of serious social problems, the records showed almost no instance of a referral to a social agency to give the children involved the benefit of the services available through social agencies. Illustrative of situations found in pending cases are the following.

A grandfather's petition for guardianship stated that the mother had moved into a trailer camp with another man after the father went into the army. The petition alleged that the trailer was filthy and that the child was undernourished and needed care and attention. The mother answered the petition by admitting that she lived in the trailer but denied the other allegations.

The parents had been removed as guardians some years ago. The guardianship had been transferred by the court to a friend of the family who was interested in having the children live with her. However, this guardian subsequently deserted her husband, divorced him, and remarried. The children continued to live with the guardian's former husband, who was the present petitioner.

The custodian had cared for the 12-year-old boy since the boy was 2 years old. She petitioned for guardianship after the boy became sick in the home of his father and stepmother, whom he was visiting. The petition alleged that the stepmother was an unfit person who drank heavily.

The father of a child born out of wedlock petitioned for guardianship of his 3-year-old son. The petition stated that he and his wife want to take the child in their home and adopt him. The boy was with the mother, who had married a sailor but was living with another man and had another illegitimate child.

Dismissed cases

Six courts in three States dismissed a total of 84 petitions for appointment of guardians during the year. An occasional petition was dismissed on the court's independent finding that the child lacked legal domicile or was already under natural or legal guardianship. But, significantly, the great majority of dismissals were found to result from the action of parents, relatives, and nonrelated persons, who by filing counterpetitions forced the

courts to weigh conflicting attitudes and interests regarding the child's guardianship as well as various allegations of the unfitness of the guardian originally proposed. As will be seen later, unopposed petitions are usually approved in a routine fashion.

Among the dismissed cases there was evidence of social investigation in only a few instances. Most of the dismissals by courts outside of California were made without a hearing. The dismissals most frequently appeared to reflect the court's reluctance to terminate parental rights, except as a last resort. Various other situations were also represented among dismissals as the following cases show.

An acknowledged father wanted guardianship of a child living with the unmarried mother, who he alleged was unfit. There was no evidence of an investigation, but a hearing was held which developed testimony contradicting the father. The mother was awarded sole guardianship of the child.

A grandmother sought to take a child from its mother because she had divorced the father while he was away in the Army. The petition was denied without study or hearing when the mother indicated she would fight it.

A minor wanted his mother made sole guardian to give legal consent to his entry into the Navy, which he alleged the father opposed. The petition was denied when the father indicated he was not opposed to the enlistment plan.

A grandmother asked for full guardianship of a child living with her, on allegations that the father drank to excess and was cruel to the child. The father's denial was accepted by the court without investigation.

A grandmother wanted guardianship of a child living in an adoptive home, alleging that the adopting mother had committed a felony and was therefore an unfit person. The record did not show who had arranged the adoption. As testimony at the hearing indicated that the State welfare department was making an investigation at the request of another department of the court, the petition was referred to that department.

A 3-year-old girl was living in the home of people who planned to adopt her. After the mother had given them the child, she changed her mind and refused to consent to adoption. As a substitute, the fosterparents sought guardianship. The petition was filed by the maternal grandfather on their behalf. A social investigation was ordered by the court. It revealed that the father had a long criminal record and the mother lived in an undesirable neighborhood and had had 12 abortions. The court, however, denied the petition on the ground that "being poor is no reason for being unfit."

The parents of an 8-year-old boy were divorced in another State. The father was given custody of the child. After the father joined the Army, the mother took the child from the home where the father had placed him and brought him into this State to live with her. Here she petitioned for guardianship. While the court denied the petition, it took no action with regard to the mother's unlawful removal of the child to another State without the father's consent.

A stepmother applied for guardianship of person and estate of her 10-year-old stepdaughter. The girl was living in another State with her natural mother who had been awarded custody in the divorce of the parents. The father recently was killed in an industrial accident. The child was entitled to several thousand dollars in compensation, payable in weekly installments. The workmen's compensation commission appointed the stepmother payee and advised her to secure guardianship through the court. Her petition was dismissed, however, on the natural mother's objections when she learned of the petition through the notice sent by the court.

A grandmother petitioned for guardianship of person and estate because, she alleged, she had continuous care of the child. Both parents were living but divorced. The mother countered with a petition for sole guardianship. Both petitions were dismissed without any explanation in the record.

Consummated cases

As noted, the bulk of the petitions in the appointment group and all of the petitions in the discharge group were consummated. There follows an analysis of these completed cases. Although the two groups, appointments and discharges, are not comparable, inasmuch as they represent conditions and practices existing in different times, the figures for both are included in the same tables for economy of space.

KINDS OF GUARDIANSHIP

The kinds of guardianship involved in completed cases are shown in table 4. The preponderance of estate guardianships shown by this table was characteristic of the courts individually as well as of the group.

Table 4.—Kinds of Guardianship involved in cases of children whose guardians were appointed or discharged by 12 courts in 1945

Kinds of guardianship	Appointments		Discharges	
	Number	Percent	Number	Percent
Total	2,957	100	850	100
Person only	675	23	25	3
Estate only	1,507	51	560	66
Both	775	26	265	31

In approximately a third of the appointments of guardians of estate, the courts at the same time appointed a guardian of the person, who was usually the same individual as the guardian of the estate.

The fact that there were so few guardians of person only among discharges is explained by the general court practice of allowing such guardianships to lapse automatically unless the filing of a petition to remove the guardian precipitates formal court action. Formal discharges of the guardian of person occurred at only 3 of the 12 courts in the study.

Cases of estate guardianship

Although guardianship actions are predominantly concerned with the estates of children, it was surprising to discover (tables 5 and 6) that the courts often lacked definite record of the nature and value of the property which was turned over by them to guardians and for which they are supposed to hold the guardians accountable and liable.

Table 5 shows a lack of descriptive information on estates in more than one out of five appointment cases and in more than one out of four discharge cases.

Table 5.—Estate Guardianship: Nature of Estates of minors before 12 courts in 1945 for appointment or discharge of guardians of estate

Nature of estates	Appointments		Discharges	
	Number	Percent	Number	Percent
Total cases involving estates	2,282	.....	825	.....
Total reported	1,769	100	605	100
Real estate items only	344	19	127	21
Personal property items only	698	39	305	50
Settlement funds only	210	12	40	7
Benefit payments only	206	12	18	3
Combinations of above items, including real estate	172	10	72	12
Excluding real estate	125	7	30	5
Other items	14	1	13	2
Total not reported	513	.....	220	.....

The courts of Michigan and California were found most heavily deficient in descriptive information. The two Michigan courts had no information of this kind on file for 22 percent of their appointments and 30 percent of

their discharges, while the two California courts lacked the information for 34 percent of their appointments and 38 percent of their discharges.

As table 6 shows, information concerning the value of estates was missing in smaller proportions of the cases in each group.

For the cases showing information, tables 5 and 6 point up three facts of particular significance. One is that real property is far less often an item in children's estates than personal property. This fact is significant because existing legislation for the protection of estates under guardianship is very largely concerned with the protection of real estate.

Table 6.—Estate Guardianship: Value of Estates of minors before 12 courts in 1945 for appointment or discharge of guardians of estate

Value of estates	Appointments		Discharges	
	Number	Percent	Number	Percent
Total cases involving estates	2,282	.....	825	.....
Total reported	1,918	100	646	100
$50,000 or more	4	(1)	4	1
$25,000 to 49,999	14	1	6	1
$10,000 to 24,999	67	3	36	5
$5,000 to 9,999	133	7	56	9
$2,500 to 4,999	218	11	82	13
$1,000 to 2,499	396	21	149	23
$500 to 999	314	16	111	17
Under $500	585	31	172	26
None	187	10	30	5
Total not reported	364	.....	179	.....

[1] Less than 0.5 percent.

A second significant fact is the growing importance of benefit payments as a basis for appointing guardians of minors. This is especially significant in view of the small amounts of money involved. The estates of 12 percent of the children in the appointment group consisted solely of benefit payments. Altogether, the estates of 332 children, or 19 percent of the total, in the appointment group and of 47 children, or 8 percent of the total, in the discharge group included an item of benefit payments. Benefits from the Veterans Administration were considerably the most numerous. A total of 317 estates in the appointment group were found to include veteran's benefit payments as against only 24 including social-security benefits and five including workmen's compensation.

The third significant finding is the overwhelming proportion of estates of small known values, notwithstanding the fact that the aggregate values were impressive, being $4,176,718 for the appointment group and $1,747,740 for the discharge group.

As table 6 shows, the known value of individual estates in the appointment group was less than $500 in over 40 percent of the cases, less than $1,000 in nearly 60 percent, less than $2,500 in nearly 80 percent, less than $5,000 in 90 percent, and less than $10,000 in all but 4 percent of the cases. The distribution of estates in the discharge group by known value shows a slightly higher proportion in the top value brackets.

This picture varied somewhat for individual States according to State exemptions from the requirements of guardianship. In States that specified no exemptions, there were naturally larger proportions of small estates. On the other hand, estates valued in excess of $10,000 did not bulk larger than 5 percent at any court.

It should be mentioned that only 329 estates in the appointment group were reported to produce incomes. The amount of income was less than $500 a year in 85 percent of the cases. Fifty-eight estates in the discharge group had yielded incomes. In all but a few cases the incomes had been less than $500 a year.

That the estate guardianship of so many children involves only small amounts of money or other property likely to be consumed by current expenses within a short period of time, directs attention to the availability and adequacy of personal guardians for the children, since it is through them that the children's needs must be met. Yet none of the courts were found to inquire routinely into whether the children for whom estate guardians were petitioned had responsible personal guardians.

Cases of personal guardianship

Table 7 shows that the courts in the study were invoked to appoint guardians of person for a total of 1,450 children. These children constituted slightly less than half the total number of children involved in appointment proceedings during 1945. The discharge group showed that a total of 290 children had been under guardianship of person, or slightly more than a third of the group.

Appointment of a guardian of person is intended to provide a child with substitute parental attention. But it is difficult to say to what extent this purpose was effectuated by the appointments made during 1945 by the courts studied.

It is evident from table 7 that in more than three-fourths of the appointments of guardians of the person only, the guardianship was actually requested to serve certain special, temporary purposes. These generally involved the giving of consent to some plan for the child, such as adoption, medical care, military service, emancipation, and marriage.

Except in the Florida courts, which made no appointments for special

purposes, and in the Connecticut courts, in which the few such appointments related to consent to adoption, need for consent to enter military service was a major reason for special appointments. The California courts were responsible for most of the appointments in connection with consents for marriage and all but one of those for medical care. One California court obviated the necessity of appointment of guardians to consent to marriage and military service by making the child a ward of the juvenile court, the judge thereupon giving the required consent in his capacity as juvenile-court judge. Louisiana courts made up most of the "other purpose" group with appointments for legal consent to emancipations.

It was interesting to find that the guardianship letters issued in appoint-

Table 7.—Personal Guardianship: Reason for Petitions for appointing guardians of minors before 12 courts in 1945 for appointment or discharge of guardians, by type of guardianship

Reason for petition	Appointments						Discharges					
	Total		Person only		Person and estate		Total		Person only		Person and estate	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	1,450	.....	675	.....	775	.....	290	.....	25	.....	265	.....
Total reported	1,143	100	573	100	570	100	241	100	21	100	220	100
Parent dead	511	45	38	7	473	83	177	73	5	24	172	78
Parent unfit	185	16	99	17	86	15	48	20	3	14	45	21
Consent for:	447	39	436	76	11	2	16	7	13	62	3	1
Adoption	34	3	30	5	4	1	3	1	3	14	0	.....
Marriage	88	8	88	15	0	.....	0	.....	0	.....	0	.....
Military service	149	13	143	24	6	1	2	1	0	.....	2	1
Medical care	139	12	139	24	0	.....	6	3	6	29	0	.....
Other purpose	37	3	36	8	1	(1)	5	2	4	19	1	(1)
Total not reported	307	.....	102	.....	205	.....	49	.....	4	.....	45	.....

[1] Less than 0.5 percent.

ments for special purposes rarely set forth the specific purpose of the appointment or set definite limits upon the guardian's authority in relation to the matter for which the appointment was made.

The courts generally grant appointments for special purposes without investigation or hearing, because such cases are considered "simple and clear-cut." The case of Thomas would indicate, however, that these cases are sometimes not quite as simple and clear-cut as they appear on the surface.

Thomas, age 17, requested the court to appoint an uncle as guardian of his person when the local naval recruiting office advised him he would have to have consent of a legal guardian to enlist. The petition stated that the mother was dead and the father in jail. The court acted favorably on the petition the same day it was filed. Subsequently the boy entered the Navy.

The guardian was visited in connection with this study. He and his wife are friendly, frank people, who were worried about Thomas because he had not written them a single letter in the 2 years that he has been away in the Navy.

The boy had lived with them since the age of 14. At that time the father killed the mother in a fit of rage and was sentenced to a long prison sentence. The effect of this catastrophe upon the boy was marked. He developed a bitter hatred for the father. He became seclusive, seemed to be afraid to meet people on the streets, and tended to keep to his own room most of the time, reading detective and western stories.

When he was 16 years old he quit school and worked at a succession of jobs, as he seemed too restless to stay on any one job for long. His decision to join the Navy was made without consulting his relatives. However, the uncle thought it best to go along with the plan as he knew how unhappy the boy was at home.

Of the total appointments of guardians of person, more than half (53 percent) were made in connection with the appointment of guardians of estate. It was freely acknowledged at the courts that in the great majority of these cases the property not only prompted the appointment but was the primary consideration in the proceeding.

The following cases are illustrative of the situations in which guardianship of the person for general purposes was petitioned.

In one case the mother had deserted the father and three children ranging in age from 1 to 6 years. The father petitioned for and was granted sole guardianship.

The parents of a 15-year-old girl were living in another State. The girl was in the home of an uncle. The uncle, with the consent of the minor, petitioned for guardianship "in the interest and general welfare of the minor." The petition was approved. The court record did not indicate that the parents had given their approval.

The parents of a 4-year-old girl were divorced and made an amicable settlement between them regarding the guardianship of the child. On the mother's nomination, the father petitioned and received appointment as sole guardian.

An 18-year-old boy came from another State to live with an uncle. With the consent of the boy and of his parents, the uncle petitioned for guardianship. The petition stated that the uncle planned to keep the boy with him permanently and was assuming full financial responsibility for him.

Prospective adopters were unable to complete the adoption proceedings until the father of the child returned from overseas duty in the armed forces. The petition stated that the State welfare department had suggested guardianship as a means of their keeping the child until the father's return.

The local welfare agency petitioned the appointment of the stepfather of a 10-year-old boy on grounds that the father was unfit. The mother was dead. The petition stated that the father had never supported the child and that the stepfather was anxious to adopt him. The petition was granted.

CHARACTERISTICS OF WARDS

The petition furnishes the simplest kind of information concerning the child and the proposed guardian. Usually the petition states the name, address, age, sex, parental status, and whereabouts, of the child, and the names and addresses of parents and, in some forms, of siblings living outside the parent home. The petitioner and the proposed guardian, if a different person, usually are identified by name, address, sex, and relation to the minor. As will be seen, there were large gaps in this information in many petitions owing to omissions and inaccuracies.

Table 8.—Parental Status of minors before 12 courts in 1945 for appointment or discharge of guardians

Parental status	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
APPOINTMENTS								
Total	2,957	.....	675	.....	1,507	.....	775	.....
Total reported	2,811	100	593	100	1,454	100	764	100
Married, living together	607	22	53	9	464	32	90	12
Sep., des., div., unmarried	337	12	197	33	63	4	77	10
Father dead	971	35	53	9	617	43	301	39
Mother dead	490	17	119	20	237	16	134	18
Both dead	406	14	171	29	73	5	162	21
Total not reported	146	.....	82	.....	53	.....	11	.....
DISCHARGES								
Total	850	.....	25	.....	560	.....	265	.....
Total reported	787	100	24	100	512	100	251	100
Married, living together	188	24	2	8	167	33	19	8
Sep., des., div., unmarried	43	6	4	17	20	4	19	8
Father dead	252	32	6	25	158	31	88	35
Mother dead	161	20	9	38	105	20	47	18
Both dead	143	18	3	12	62	12	78	31
Total not reported	63	.....	1	.....	48	.....	14	.....

Parental status

Table 8 shows that the great majority of wards whose family backgrounds are known come from broken families. More than a third of the children in the appointment group had lost their father; more than a sixth had lost their mother; and more than an eighth had lost both parents. Nearly another eighth were born out of wedlock or were the victims of parental divorce, separation, or desertion. Full orphanhood was especially pronounced among appointments involving personal guardianship. The discharge group revealed a somewhat larger proportion of children who were full orphans.

It should be noted that guardians of person were appointed for a number of children whose parents were reported to be married and living together. In some of these cases it was found that the minor desired legal consent to marry, but the parents lived out of the State. Other cases involved consent to enter the armed forces when the father was away from home temporarily, thereby necessitating that the mother ask for sole guardianship in order

Table 9.—Living Arrangements at time of petition of minors before 12 courts in 1945 for appointment or discharge of guardians, by type of guardianship

Living Arrangements	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
APPOINTMENTS								
Total	2,957	.....	675	.....	1,507	.....	775	.....
Total reported	2,690	100	543	100	1,395	100	752	100
Both parents	531	20	11	2	446	32	74	10
One parent	1,226	46	93	17	774	55	359	48
Relatives	601	22	266	49	77	6	258	34
Foster care	177	6	93	17	42	3	42	6
Independently	155	6	80	15	56	4	19	2
Total not reported	267	.....	132	.....	112	.....	23	.....
DISCHARGES								
Total	850	.....	25	.....	560	.....	265	.....
Total reported	776	100	24	100	500	100	252	100
Both parents	189	25	0	.....	168	34	21	8
One parent	354	46	1	4	241	48	112	45
Relatives	157	20	16	67	45	9	96	38
Foster care	42	6	7	29	19	4	16	6
Independently	34	4	0	.....	27	5	7	3
Total not reported	74	.....	1	.....	60	.....	13	.....

to give legal consent. In still another group of cases the parents voluntarily surrendered the child to the proposed guardian in order to facilitate adoption.

There were also cases in which the custodian of the child petitioned for guardianship because the parents were away in military service or attending school in another State.

Interestingly, there were no cases of guardianship by social agencies for the purpose of obtaining power to consent to medical care, although this is a social-agency problem in many areas studied, particularly in situations where fathers are employed away from home for long periods and the child whose mother is dead is in an agency foster home.

In a few instances, guardianship was taken by relatives as a means of giving a rural child legal residence in the city during a school year to avoid paying tuition in the city schools.

In some cases where guardians of person were appointed, both parents were reported to be living, yet there was no evidence that notice of the petition was sent them or that they had consented to the change of guardianship. This was especially true in the case of older children who desired legal consent for military service or marriage.

Of the children supplied only guardians of estate, it will be noted that 5 percent were full orphans. In none of these cases was there evidence of the child having a legal guardian of person through previous court appointment.

It was also interesting to find that in only a few instances of estate guardianship where both parents were shown living together, were both of them appointed to the guardianship.

Living arrangements

Although 86 percent of the children in the appointment group had one or both parents living, only 66 percent were definitely known to be living in the parental homes. Of those living outside the parental homes, two-thirds lived with relatives, about a sixth lived in foster homes or institutions, and a slightly smaller group lived independently. See table 9.

The children under guardianship of person naturally showed the greatest proportion of separations from the parental homes. Nearly 5 in 10 lived with relatives. Of those living in foster care, all but a few were in family homes.

Sex of children

Table 10 shows more boys than girls in the appointment group, and the reverse true in the discharge group. The war situation during 1945 partly

explains this. Many teen-agers without parents, who desired to enlist, were referred to the courts for appointment of guardians to give legal consent.

Table 10.—Distribution by Sex of minors before 12 courts in 1945 for the appointment or discharge of guardians, by type of guardianship

Sex of minor	Appointments								Discharges							
	Total		Person		Estate		Both		Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	2,957	100	675	100	1,507	100	775	100	850	100	25	100	560	100	265	100
Male	1,578	53	406	60	797	53	375	48	412	48	11	44	284	51	117	44
Female	1,379	47	269	40	710	47	400	52	438	52	14	56	276	49	148	56

Table 11.—Age Distribution at time of petition of minors before 12 courts in 1945 for appointment or discharge of guardians, by type of guardianship

Age of minor	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
APPOINTMENTS								
Total	2,957	.....	675	.....	1,507	.....	775	.....
Total reported	2,912	100	670	100	1,481	100	761	100
Under 5	457	16	126	19	183	13	148	19
5 to 13	1,034	36	169	25	563	38	302	40
14 to 16	621	21	79	12	360	24	182	24
17 to 20	800	27	296	44	375	25	129	17
Total not reported	45	.....	5	.....	26	.....	14	.....
DISCHARGES								
Total	850	.....	25	.....	560	.....	265	.....
Total reported	834	100	25	100	555	100	254	100
Under 5	53	6	5	20	28	5	20	8
5 to 13	324	39	14	56	177	32	133	52
14 to 16	198	24	5	20	134	24	59	23
17 to 20	259	31	1	4	216	39	42	17
Total not reported	16	.....	0	.....	5	.....	11	.....

Age of children

The age distribution of the children indicates that special use was made of guardianship procedure to provide children the legal consent of a guardian to such plans as entering the armed forces or marrying. Table 11 reveals that more than two-fifths of the children who were supplied guardians of person during 1945 were upwards of 17 years of age.

Sibling relationship

Nearly 45 percent of the appointments involved siblings (table 12). The number of children from the same families ranged as high as seven but was most commonly two. In every case, siblings were given the same guardians.

Table 12.—Sibling Relationship of minors before 12 courts in 1945 for appointment of guardian, by type of guardianship

Number of siblings	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	2,957	100	675	100	1,507	100	775	100
None	1,649	56	542	80	705	47	402	52
One	736	25	86	13	409	27	241	31
Two	326	11	39	6	195	13	92	12
Three or more	246	8	8	1	198	13	40	5

CHARACTERISTICS OF GUARDIANS

Table 13 shows who were the guardians. It is seen that guardians may be individuals or two persons acting jointly or associatively, or organizations, either social or banking. Individuals acting as guardians may be public officials or private persons such as parents, other relatives, friends, or strangers.

It should be noted that not all the courts used all these types of guardian.

Coguardians were not used by the courts studied in Connecticut; public guardians were not used in Connecticut, Florida, and Louisiana; social-agency guardians were not used in Florida, Missouri, and Louisiana; banks were not used by one of the two courts studied in Florida, in Missouri, and in Louisiana. The only class of guardians used by all courts in the study was private persons.

Table 13.—Types of Guardians of minors before 12 courts in 1945 for appointment or discharge of guardians, by type of guardianship

Type of guardian	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
APPOINTMENTS								
Total	2,957	100	675	100	1,507	100	775	100
Coguardians	67	2	38	6	15	1	14	2
Joint	58	2	38	6	15	1	5	1
Associate	9	[1]	0	.....	0	.....	9	1
Individual	2,823	96	616	91	1,447	96	760	98
Public official	33	1	4	[1]	24	2	5	1
Private person	2,790	95	612	91	1,423	94	755	97
Organization	67	2	21	3	45	3	1	[1]
Social agency	25	1	21	3	3	[1]	1	[1]
Bank or trust	42	1	0	.....	42	3	0	.....
DISCHARGES								
Total	850	100	25	100	560	100	265	100
Coguardians	23	3	0	.....	5	1	18	7
Joint	7	1	0	.....	5	1	2	1
Associate	16	2	0	.....	0	.....	16	6
Individual	797	94	25	100	525	94	247	93
Public official	3	[1]	0	.....	3	1	0	.....
Private person	794	94	25	100	522	93	247	93
Organization	30	3	0	.....	30	5	0	.....
Social agency	0	.....	0	.....	0	.....	0	.....
Bank or trust	30	3	0	.....	30	5	0	.....

[1] Less than 0.5 percent.

Private-person guardians

In view of the traditional conception of guardianship as a personal relation, it is not surprising to find that an overwhelming proportion of guardians are individuals. Analysis of the relation of guardians to wards reveals strong adherence to another traditional attitude towards guardianship which favors the appointment of blood relatives.

Of guardians of estate, virtually 7 out of 10 in the appointment group and nearly 6 out of 10 in the discharge group were parents. Other relatives made up the second largest group. These relatives included grandparents, uncles, aunts, and older brothers and sisters.

In situations requiring personal guardianship, where parents are likely to be absent or incompetent, next-of-kin appear to be given preference. In the appointment group, more than half of the guardians of person only were relatives. Nearly three-tenths were nonrelatives, including prospective adoptive parents, foster parents, friends, attorneys, and others.

It will be noted in table 14 that the private-person guardian was a female in approximately two out of three cases. This preponderence of female guardians is explained by the fact that mothers are more likely to survive fathers.

Coguardians

As has been shown in table 13, coguardians were named for a total of 67, or 2 percent, of the children in the appointment group and for 23, or 3 percent, of the children in the discharge group. Nine of the appointments were

Table 14.—Sex of Guardians of minors before 12 courts in 1945 for appointment and discharge of guardians, by type of guardianship

Sex of guardian	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
APPOINTMENTS								
Total	2,957	.....	675	.....	1,507	.....	775	.....
Total reported	2,880	100	655	100	1,454	100	771	100
Male	943	33	201	31	510	35	232	30
Female	1,937	67	454	69	944	65	539	70
Total inapplicable	77	.....	20	.....	53	.....	4	.....
DISCHARGES								
Total	850	.....	25	.....	560	.....	265	.....
Total reported	807	100	25	100	527	100	255	100
Male	348	43	6	24	253	48	89	35
Female	459	57	19	76	274	52	166	65
Total inapplicable	43	.....	0	.....	33	.....	10	.....

associative arrangements created simultaneously but giving the coguardians separate responsibilities, one for the person of the child and the other for the estate. Joint guardianships, which were over six times as numerous, made the coguardians jointly responsible for the same thing. In slightly more than half the cases the joint guardianship concerned only the person of the child.

Coguardianships represented a wide variety of arrangements. The associate appointments usually were given to banks and relatives. Banks were made responsible for estates, and relatives for the persons of the children. In joint appointments, adoptive parents, a remarried parent and spouse, and a couple related to the child by blood were most frequently selected.

In one case the mother and paternal grandmother were made joint guardians of the child's person on nomination of the father who stated he was leaving the State.

In another case an agency executive and a foster mother were appointed joint guardians of both the person and the estate of a minor under agency care.

In many cases in which non-parent persons received appointment, there was no evidence of investigation, hearing, or consent by the living parent.

In one such case, a couple not related to the 2-year-old child concerned were appointed guardians of person on their own allegations of the mother's death and the father's unfitness.

In another case involving an infant, the parents had been divorced. The grandparents were named coguardians of the child's person when the father, who was legal custodian, went overseas in military service.

In a joint guardianship of the estate of a child, the mother had nominated the father, whom she described as irresponsible, in the hope of drawing him into more active participation in caring for and planning for the child.

In an associate guardianship of a 16-year-old girl, the father had nominated himself sole guardian of person, and a bank guardian of estate. The petition described the mother as an unfit person living at no fixed address, in another State. There was no corroborative evidence in the record.

Social-agency guardians

Social agencies became guardians of 25 children in 1945 by appointment of four courts in three of the States studied. The appointments concerned only the child's person in all but four cases. Of the latter cases, one involved both person and estate, and the other three involved only the estate.

In each of the appointments, the agency by name or the executive director by official title was designated guardian. The agencies included local public welfare departments, State-wide private adoption agencies, county probation offices, county agents, and local children's agencies and institutions.

In each of the four cases of agency guardianship over estate, the amount

involved was less than $500. In three cases the children were already under agency care.

In the fourth case, the local probation officer was nominated by the Veterans Administration after the father was rejected as unfit to handle the child's benefit money. There was no indication, in the record, of the basis for the rejection. When the probation officer was interviewed, he could not recall the circumstances of the case. He maintains no contact with the child except to forward the monthly checks to the parents.

Appointments involving the person of the child were primarily for the purpose of facilitating adoption. In one case, however, the agency sought to prevent an adoptive mother from interfering with plans for the foster-home placement of a 15-year-old girl whom the adoptive mother had ejected from home.

Public guardians

The office of public guardian has been established by statute in California, Connecticut, and Missouri.

In California, the office was authorized in 1945 for counties having a population of 1,000,000 or more [*82*]. Los Angeles County created the office that year by ordinance. It is under the county board of supervisors which has authority to terminate the office and make other plans for public guardianship.

The public guardian may accept appointment over the person, the estate, or both, of minors and incompetents whose estates do not exceed $5,000 in probable value. He is on a fixed salary and is prohibited from charging fees. He may employ attorneys and appraisers to assist him, however, and charge the cost of this service to the ward's estate. He does not have to file bond in individual cases.

The office began functioning December 1,1945. At the time of visit, the public guardian had functioned for nearly a year. In a review of his work, he indicated that the bulk of his time is spent on cases of incompetent adults.

For both adults and minors, his activities included court appearances and the preparation and filing of necessary legal papers including petitions, annual and final accounts, and returns on sales of real estate.

He is authorized to take possession of the ward's property and make any necessary conversion of the assets in the interest of better investment or to meet current expenses. He is allowed to make disbursements in amounts up to $100 a month without specific court order.

During the first 6 months of operation he received appointment over the estates of six minors.

These children included five siblings ranging in age from 7 to 14. The mother

was a recipient of aid to dependent children. The children acquired legacies of $800 to $1,150 per child. The public guardian arranged transfer of these funds from another State from which the family recently moved. He also arranged the commitment of one child to a State mental institution and worked out a plan of paying the institution $20 a month from the ward's estate. The other four children lived with the mother. The guardian received court authorization to allow the mother $45 a month from each child's estate for their support and maintenance.

The second State having a public-guardian program is Connecticut. The program is a new development in this State also. It was authorized in 1945 by legislation which created the office of estate administrator in the State welfare department. In view of the welfare auspices of the program, it will be discussed in chapter 10.

The third State providing public guardianship is Missouri, where it is a long-established program organized on a county basis. The public administrators of each county may be appointed guardian of person, estate, or both, of minors and incompetents.

The appointment over the person may be made for minors under 14 years of age whose parents are dead, and who have no legal guardian of person.

The appointment over estates may be made for minors whose parents are dead or, if living, refuse or neglect to qualify, or have been removed, or have no authority under law to take care of and manage the estates of their minor children.

There is no limit on the size of estate that may be entrusted to the public guardian. [*83*]

The county public administrator is an elective officer. His tenure is limited to 4 years. There are no qualifying requirements in law, but the incumbents in the counties visited were all attorneys. The public administrator is allowed to charge fees in the same amount as private guardians. He is under a $10,000 bond, on which he may be sued. Certain local public officials are expected to notify him of all property and estates which should be in his charge. He is authorized to institute suits and prosecutions necessary to recover the property, debts, papers, and other belongings of wards. [*84*]

The public administrator was not used as guardian of either the person or the estate of minors by the smaller Missouri court during 1945. The larger court used him for 16 children. In four cases the appointment concerned only the person, in seven only the estate, and in five both the person and the estate. It is the policy of this court to appoint the public administrator only when the parents are dead and no relatives are willing to serve or when a parent or relative nominates the public administrator.

This public administrator stated that he accepts appointment as guardian of person only in cases where a minor requires some kind of legal consent. Although the appointment is presumed by law to remain in force for the

minority of the child, the public guardian considers his responsibility ended when he has given the needed consent.

When appointed guardian of both person and estate, he functions only in relation to the estate, leaving the care and supervision of the person of the child to whoever may be the custodian, despite that person's lack of legal authority to plan for and make decisions for the child.

> In another county visited but not included in the study, the public administrator takes full responsibility in guardianships of person. He reported having 40 children under guardianship of person and estate. He has given consent to the adoption of some of the children and has placed other children in foster homes which he selected himself.

When made responsible for estates, the public guardian takes over complete management control. Estates under his guardianship ranged in value up to $9,000.

The public administrator is not required by law to make any report of his work, but the local court may require him to open his books for inspection. He must submit annual accounts on each estate under guardianship. The account serves as the basis for determining his compensation at the local court studied. Officially this is not supposed to exceed 1 percent of the capital value of the estate the first year and 5 percent of the annual income thereafter. However, in a number of cases which came under review the actual fees exceeded the limitations.

For example, in the case of an estate valued at $2,000, over which the public guardian was appointed on nomination of the juvenile court, the fee amounted to $50 for the first year, or 2.5 percent of the capital value of the estate. In other cases the fees were even greater—in one case $45 of a $900 estate, in another nearly 7.5 percent or $34 of a $480 estate. In guardianships of person only, no fee is allowed.

Wards of the public guardian present a variety of situations.

> Two children under personal and estate guardianship were wards of the juvenile court. It was not clear from the record whether the public guardian's appointment was intended to supersede the juvenile-court wardship.

> Three children under both personal and estate guardianship were siblings whose parents were dead. Each child had an estate of $2,500. They all lived with an aunt in another State. The public administrator forwards regular support allowances and has advised the aunt to petition her local court to appoint her guardian of person.

> In one case, the public administrator was made responsible for monthly veteran's benefits going to a Negro boy aged 13 who was living with his mother. The boy was attending high school, and the mother had herself finished 2 years of high school. The local veterans' office had recommended appointment of the public administrator. The reason could not be determined. The public administrator allowed the mother $25 a month for regular expenses of the child. Extra

expenses had to receive advance approval. This policy caused the mother considerable embarrassment as she was required to ask shopkeepers to telephone the public administrator for on-the-spot approval of individual purchases.

One court in California and another in Michigan were found to use public officials informally in the capacity of public guardians. In California, an employee of the Los Angeles County Bureau of Public Assistance has been so used for many years. The appointments are made in her own name. They have been limited to minors under care of the agency. No fee is allowed. Bond is required in each individual case, the cost of which is charged against the ward's estate. During 1945 this person received 13 appointments over estates involving primarily the handling of benefits payable from veteran and social-security programs.

In the Michigan community, an employee of the county welfare department was appointed guardian of estate of four children in 1945, three of them siblings. He is allowed a fee which may vary according to the value of the estate, but is fixed at 5 percent of annual income in veterans' children's cases. In previous years he had received appointments as guardian of person. When serving in that capacity he has taken full responsibility for arranging for the care of wards, including their placement in foster homes when necessary.

Bank guardians

The appointment of banks and trust companies as guardians is authorized in all the States studied, but the statutes of four of the States do not permit banks to act as guardians of person. [*85*]

The two States in which banks may be appointed guardians of person, Louisiana and Missouri, made no such appointments in 1945. However, a bank in one of the communities studied in Missouri had received such appointments in the past and was acting as guardian of both person and estate of two children at the time of visit.

Both children were full orphans. One, a girl aged 15, was reported to have a sizable estate. The bank official found an apartment for her and arranged that an aunt live with her as companion. The other, a boy also aged 15, had an estate worth $4,000. The bank official learned that a widow with two grown children had been a close friend of the boy's mother. Conferences with her resulted in her agreeing to move into the house which the mother left the boy, to take care of him. The bank official maintains frequent contact with both children and their custodians.

Estates under bank guardianship tended to be large. This is evidenced by the fact that, though comprising only 2 percent of all estate guardianships, bank guardianships constituted 5 percent of the guardianships of estates worth $5,000 or more. On the other hand, it is of interest to note the rela-

tively large use made of banks in veteran's benefit cases. More than half of the bank appointments in 1945 involved estates of minors receiving monthly benefits from the Veterans Administration. These estates usually accumulated less than $500 a year.

As a matter of general policy, the banks are inclined to discourage their use as guardians of small estates because of the high administrative costs involved in the handling of such estates. Banks visited in the communities of the study indicated a general reluctance to accept guardianship over estates worth less than $10,000. All of them do so, however, as a matter of "public service" in special situations. One bank indicated that estates under $5,000 involve a definite loss of money for the bank.

> The questionableness of using banks as guardians of small estates is illustrated by the case of a boy whose inheritance of $500 was turned over to the guardianship of a local bank when the boy was 15 years of age.
>
> Though experienced business people, the parents asked the bank to take guardianship in the belief that the bank's investment of the money would yield a larger return for the boy's college education.
>
> In 1945, when the boy attained majority and his guardianship came up for termination, the bank filed a final account which showed that the money had been held in a non-interest-bearing account until the previous year when it was invested in war bonds. In consequence, instead of accumulating earnings, the original amount was reduced by nearly $80 by bank fees.

Bank fees are not uniform. In one State a bank makes a minimum service charge of $25 annually, to which are added opening and closing fees of 0.5 percent of the market value of the principal.

Another bank makes the following additional charges on principal: $3 a thousand on the first $10,000; $2 a thousand on the next $10,000; $1.50 a thousand on the next $30,000; $1 a thousand on the next $50,000; and 50 cents a thousand on all amounts over $100,000.

Charges on income are scheduled by this bank as follows: 5 percent of the gross income between $1 and $10,000; 4 percent on the next $20,000; and 3 percent on gross income in excess of $30,000. Other banks make minimum service charges of $50 a year, charge 0.4 to 0.5 percent annually on the principal, and vary charges on income according to the activity of the estate as well as its value.

Of 16 bank guardianships discharged in 1945, 2 showed charges to aggregate 2 percent or less of the known value of the estate; five, from 2 to 5 percent; seven, from 6 to 8 percent; and two, 11.3 and 13.3 percent respectively.

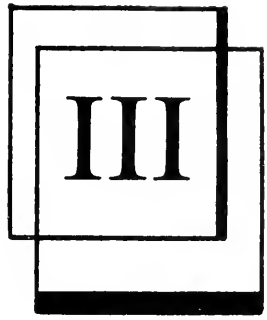
Varying policies are followed by banks in the management of the estates under guardianship. A number of banks indicated that they confine themselves strictly to matters of investment, disbursement, and accounting, without establishing any contact or consultation with the child or his personal

guardian. On the other hand, one bank encourages the trust officers to familiarize themselves with the personal situation of the children and allows them to be guided accordingly.

Another bank helps the personal guardian work out budgets and prepare allowance requests for court approval. This bank also consults the minor on problems growing out of his estate as a means of training him to manage his financial affairs responsibly when he comes of legal age. The bank cited a number of instances where it found it necessary to recommend conversion of estates into irrevocable trust funds as a means of controlling the release of money to the child after the age of majority.

The banks also have varying investment policies. One bank converts estates under $5,000 entirely into government bonds. Estates valued to $10,000 are invested by this bank partly in State and partly in municipal bonds. Estates in excess of $10,000 are invested also in stocks. Another bank decides investments on the basis of specific advice from its statistical and investment service in each case. As a rule, however, half of an estate is usually in nonfluctuating bonds and the other half in fluid stocks and bonds.

Although only a small proportion of estates are under bank guardianship, most of the courts in the study indicated a preference for banks because of their businesslike methods and strict compliance with accounting and reporting requirements.



Providing Guardianship

5. The Court

Providing guardianship for children has been a traditional function of courts in our system of government. When necessity arises for the appointment of a guardian, it is expected that the courts will be petitioned, thus invoking—

> "the direct interposition of the State, which, under our form of government, performs the functions assigned under the English common law to the King, as *parens patriae*. As in England the King, so in America the State, is the general protector of all * * * who cannot protect themselves. While in England this branch of jurisdiction belongs almost exclusively to the Lord Chancellor and courts of equity, it is in the United States mostly relegated to that class of courts to which is entrusted also the supervision over the estates of deceased persons * * *."[*23*, pp. v-vi]

Parenthetically, it should be noted that Woerner wrote this in 1897 before the juvenile-court movement got under way.

JURISDICTIONAL ORGANIZATION

Under the law of guardian and ward in all the States studied, the probate court or a probate division of a general court is given exclusive jurisdiction

in appointing guardians. However, it is possible to bring questions affecting the guardianship of the child's person before other courts or divisions of courts through various types of proceedings. The difficulties inherent in this situation have long been recognized as calling for a centering of jurisdiction over children in a single court, such as a juvenile court or family court. [*86*]

Juvenile courts have been established throughout the country, and family or domestic-relations courts on a less extensive scale. [*87*] But nowhere is either type of court given full and complete jurisdiction over children. In the States studied, only one county, Dade County, Florida, has a court combining domestic-relations and juvenile jurisdiction. [*88*]. Everywhere else there are separate courts or separate divisions of general courts.

The courts or divisions having only juvenile jurisdiction vary considerably from State to State in organization and in powers.

In Connecticut there is a single State-wide juvenile court organized into three districts [*89*].

Florida has separate juvenile courts in seven populous counties, and in one county, as has been noted, the juvenile court is combined with the domestic-relations court. Elsewhere in the State juvenile jurisdiction is lodged in county judges' courts. [*90*]

Louisiana has separate juvenile courts in Orleans and Caddo Parishes, but in other parts of the State juvenile jurisdiction is placed in district courts. [*91*]

In Michigan, the juvenile court is a division of the probate court. [*92*]

In Missouri, the circuit court has juvenile jurisdiction, but in the city of St. Louis and in Jackson County (which includes Kansas City) the juvenile courts are organized as separate divisions. [*93*]

California has placed juvenile jurisdiction in the superior court, which while exercising juvenile jurisdiction is known as the juvenile court. [*94*]

In all the States, the juvenile courts have power to determine the custody of, and to commit to others than their parents, dependent or neglected children, and delinquent children, who are below specified ages (these terms are not used in the laws of Michigan and California, which list instead a variety of equivalent situations).

The particular age specified in the statute books varies among the six States. Only California has set the age at 21 years to correspond to the legal age of majority. In Connecticut, an age limit of 16 years has been fixed, except for persons 16 to 18 years of age transferred from another court. In Florida the age limit is 18 years. In the other three States, the age limit is 17 years. [*95*]

Various statutory or administrative provisions further restrict the juvenile court from exercising broad jurisdiction over children. In Connecticut,

Michigan, and Florida (except Dade County), the court of juvenile jurisdiction cannot determine the custody of children when such custody is at issue in the divorce action of parents. Jurisdiction in this matter rests with another court, the superior court in Connecticut and the circuit court in Florida (except Dade County). [*96*]

Adoptions are outside the jurisdiction of the juvenile court in Connecticut and Florida (except Dade County), being handled in the former State by the probate court and in the latter State by the circuit court. [*97*]

In all the States except California and Louisiana, the commitment of certain mentally and physically handicapped children is either excluded from juvenile jurisdiction or made a concurrent responsibility with other courts.

In Connecticut, the probate court has commitment power over children who are crippled, epileptic, mentally ill, drug-addict, inebriate, and mentally defective, when they have not come before the juvenile court. [*98*]

In Florida the power to commit feebleminded and epileptic children rests with the county judge's court even in a county where there is a separate juvenile court. Michigan places the power to commit feebleminded and crippled children in the probate court proper rather than in the juvenile-court division. Missouri divides commitment jurisdiction over feebleminded and epileptic children between the probate and county courts. [*99*]

In all six States there is divided jurisdiction over children charged with offenses of a felonious nature. However, in some States the juvenile court must waive jurisdiction before another court can step in. In California, the children must be 18 years of age or older. In Connecticut, they must be of a type defined by statute as admissible to State training schools and reformatories. In Florida, they must have committed rape, murder, manslaughter, robbery, arson, or burglary. In Michigan they must be over 15 years of age and must have committed a crime punishable by imprisonment for more than 5 years. [*100*]

No State in the study except Missouri gives the juvenile court power to appoint individuals as guardians of minors. The Missouri law empowers the juvenile division of the circuit court to appoint as guardian any incorporated society organized for the care and protection of abandoned, ill-treated, and friendless children [*101*]. The Connecticut law expressly excludes guardianship from the jurisdiction of the juvenile court [*102*].

However, juvenile-court custody and commitment orders are frequently construed to have the same effect as letters of guardianship with regard to the person of the child. In Connecticut, this interpretation has been incorporated in an official ruling of the juvenile court with reference to the commitment of children to the custody of private social agencies.

> "On June 29, 1942, at a meeting of the Juvenile Court Judges, a rule of procedure was adopted interpreting the word 'custody' insofar as it affects

private agencies to mean that custody shall endow the agency in question with all the rights over the person of the child that his or her natural guardian has hitherto enjoyed. In other words, the custodial agency by this interpretation is in effect made guardian of the child's person, but not, of course, of his property. The judges also agreed that, in the case of neglected children, custody shall endure until the child's 18th birthday while the custody of the delinquent children shall not terminate until such child becomes 21." [*103*]

Not infrequently the confusion caused by divided court responsibility for children results in an overlapping of work or an overlooking of the problems of personal guardianship of children. In this connection, it was interesting to find in several communities where the probate court is separate from the juvenile court, that each court had the impression that the other handled guardianship of the person, with the result that neither court took real responsibility in this matter.

On the other hand, in situations where two courts become interested in the same child, the question of jurisdiction may take precedence over the welfare of the child. This is especially likely to occur where the court of guardianship jurisdiction has an inferior position in the State judicial system to the other court concerned with the child. It is noteworthy in this connection that the probate court of Connecticut only recently was made a court of record and its proceedings accorded the presumption of regularity and validity [*104*].

The Haley case illustrates some of the difficulties that may arise when two courts of unequal status become interested in the same child:

Mary Haley was born in 1931. Her parents were divorced 2 years later. In the divorce action, the divorce court awarded custody to the mother, and put the father under an order to support Mary. Mary has actually lived with her mother for only brief and generally unhappy periods. Mr. Haley is an alcoholic who has had many encounters with law-enforcement agencies. Mrs. Haley also is a heavy drinker, and her promiscuity has brought her considerable unfavorable attention. Neither parent has ever provided a secure or continuous home for Mary.

Except for the brief times that the mother took Mary in with her or placed her in a boarding school, Mary lived with her maternal grandmother. The mother made no contributions towards Mary's support, despite the fact that by court order she received a substantial income for that purpose.

Two years ago, Mrs. Haley placed Mary again in a boarding school, but in a short time, as on previous occasions, Mary was returned to her grandmother because the mother had failed to pay the school. This time the grandmother decided she should have legal guardianship to prevent the mother from interfering again. Mary filed the petition in her own name and the court approved it.

Shortly afterwards Mrs. Haley filed an objection with the divorce court which had awarded her custody of Mary. The divorce court ruled that the probate court could not change the custody determination. It declared the guardianship appointment void.

THE COURT OF GUARDIANSHIP JURISDICTION

In all six States the power of appointing guardians has long belonged to the particular courts that administer estates. In Connecticut, Michigan, and Missouri, these courts are known as probate courts. In the other States they are probate divisions of general courts, designated county judges' courts in Florida, district courts in Louisiana, and superior courts in California.

In other States they are styled differently. They are called orphans' courts in Pennsylvania, prerogative courts in New Jersey, surrogates' courts in New York, and courts of ordinary in Georgia.

Origin of jurisdiction

That the appointment of guardians should be entrusted to courts of probate jurisdiction is the result of historical accident and tradition dating back into the beginnings of our legal system.

The charters and instructions given to the colonies required that colonial legislation must conform to English law. Consequently, some colonies set up special courts to administer estates of orphaned children on the pattern of—

> "the Court of Orphans of the city of London which had the care and guardianship of children of deceased citizens of London in their minority, and could compel executors and guardians to file inventories, and give securities for their estate." [*105*]

Most colonies, however, simply appended jurisdiction over the estates and persons of minors to probate jurisdiction [*106*]. Three States of the study, Connecticut, Michigan, and Missouri, created separate probate courts to which guardianship jurisdiction was attached. In Connecticut, provision was made as early as 1698 for separate probate judges in the counties. Separate probate courts were set up in 1750 on a district basis. Michigan created the office of probate register in 1811, and in 1818 established separate probate courts in each county. The Missouri Constitution of 1850 created a separate probate court in each county. [*107*]

The other three States, Florida, Louisiana, and California, added guardianship to the probate function of courts of broad jurisdiction. In Florida, guardianship procedures were set forth as early as 1823. Jurisdiction was lodged in the county judges' courts in 1828. In Louisiana, in 1856, the

separate probate courts established in 1805 were abolished and jurisdiction was transferred to the district courts of general jurisdiction. It has remained there to the present time except for the period from 1868 to 1879, when it belonged to local parish courts. The California constitution of 1849 conferred guardianship jurisdiction upon the county courts. Although a separate probate court was authorized for the city and county of San Francisco in 1862, the constitution of 1879 constituted superior courts in each county and vested them with guardianship jurisdiction. [*108*]

Subjects of jurisdiction

The joining of guardianship and probate jurisdiction has meant, in most States studied, that the guardianship problems of children will come before courts whose primary interests are not in children, but in estates. These courts follow a fiscal approach rather than the social approach so necessary in dealing with children.

Probate business is generally centered on the probating of wills and the administration of estates. Related activities include the appointment of guardians of incompetent adults in all six States; the supervision of testamentary trusts in Connecticut, Michigan, and California, and of estates of missing persons in Louisiana and California; the compromise of minors' claims by parents in Connecticut and California; and special inheritance and estate tax proceedings in Connecticut.

Some courts additionally have responsibility for a variety of other matters which for the most part are not related to the interests of children. These include, in Connecticut, the waiving of blood tests and the 5-day marriage requirement; in Florida, the issuance of marriage, hunting, fishing, and other licenses, property matters of less than $100, and landlord-and-tenant problems; in Michigan, secret marriages, sterilization of incompetents, delayed birth registrations, and drain and condemnation proceedings.

The courts of California have general civil and criminal jurisdiction; likewise the courts of Louisiana outside Orleans Parish. [*109*]

Even where the probate courts were found to have other important responsibilities for children besides guardianship, such as adoptions in Connecticut, and adoptions and juvenile-court matters in Michigan, it was observed that guardianship cases usually did not receive the same careful individualization and attention to social factors that customarily were given to other children's cases.

By and large, guardianship cases of minors represented a small part of the general work of the courts having jurisdiction. The only court in the

study which published an annual report of its work showed the following "list of proceedings instituted in the probate court":

> Wills admitted to probate, 107; administrative proceedings upon intestate estates, 76; guardians (minors) appointed, 30; conservators (incapable) appointed, 12; commitments of mentally ill, 3; inebriates, 1; drug addicts, 0; crippled children, 0; feebleminded, 6; epileptic, 0; adoption proceedings, 12; trust estates, 24; special tax proceedings, 4; waiving of blood tests, 20; waiving of blood tests and 5-day marriage requirement, 69; waiving of 5-day marriage requirement only, 157; waiving of blood test of one party only, 4. [*110*]

ORGANIZATION OF THE COURT

Administrative organization further influences the effectiveness and efficiency of courts in guardianship matters. Particularly important in this connection are factors related to the size of the area that the courts must serve, provisions for State control over the administration of courts, and the adequacy of individual court staffing, financing, and equipment.

Territorial jurisdiction

Guardianship jurisdiction is divided among geographic units of varying size and population in each State . The territory served by individual courts varies from several counties to single towns.

In four States the courts cover individual counties, but the counties are extremely varied. For example, the population of California counties ranged from 323 to 2,785,643.

The Louisiana courts are organized into districts comprising from one to five parishes (counties) which range in population from 19,598 to 494,537. The Connecticut courts are likewise organized on a district plan but the units consist of towns rather than counties. Most districts embrace but a single town; the largest, eight towns. Populations of these districts range from 300 to 233,103.

Serving such extremes of area and population, it is natural that the courts should have developed unevenly in the States.

The size of population of the area served by a court has a definite relation to the volume of court business. Courts serving large population centers frequently suffer from too much business, while the reverse is true of the courts serving sparsely populated areas. In this connection it is noteworthy that populations of less than 10,000 were served by 87 of 118 courts having guardianship jurisdiction in Connecticut, 25 of 67 courts in Florida, 21 of

83 courts in Michigan, 13 of 115 courts in Missouri, and 12 of 58 courts in California.

The extremes in the volume of business coming to courts is suggested by figures from California and Connecticut. In California, a tabulation of superior-court filings of all types for the year ending June 30, 1946, revealed less than 100 filings in 4 courts, between 100 and 499 filings in 18 courts, between 500 and 999 filings in 9 courts, between 1,000 and 4,999 filings in 19 courts, and 5,000 and more filings in only 8 courts. Separate figures on filings in guardianship matters are not shown [*111*].

In Connecticut, where the courts are heavily dependent upon fees, the report of annual fees collected by probate courts for 1945 reflects a similar disparity in court business. The report showed that 30 of the State's 118 probate courts had annual incomes of less than $500, 59 had incomes of $500 to $4,999, 15 from $5,000 to $9,999, and only 14 had incomes of $10,000 or more [*112*].

Central administration

While the statutes of each State prescribe uniform rules to be followed by the courts in guardianship proceedings, provisions for enforcing uniformity in practice and assisting the courts in maintaining adequate service, were minimal in practically all the States.

No State in the study has adopted a system of central direction of the business of the courts to the extent that an executive officer is empowered to equalize work loads of all the courts in the State, eliminate duplication of effort, assign cases to judges best qualified to deal with them, require reports, and prescribe standard operating procedures.

Some machinery in this direction has been developed in all the States, however. In Connecticut, an office of executive secretary of the judicial department was created by legislative act in 1937, but the authority of this official does not extend to the probate courts [*113*]. In Florida, the Governor has authority to disqualify and transfer county judges, and the circuit courts are charged with "supervision and appellate jurisdiction of matters arising before County Judges pertaining to their probate jurisdiction, or to the estates and interests of minors, and of such other matters as the Legislature may provide." [*114*] But it is understood that the Governor will exercise his authority only on specific complaint or request, and the circuit courts have not developed standards or procedures for supervising county judges' courts.

In Michigan, the supreme court has rule-making but not supervisory powers. In Missouri, a legislative act in 1943 provided that the reporter of

the supreme court should undertake certain administrative duties for the State courts. [*115*]. The Constitution of 1945 grants the supreme court definite rule-making powers and additionally vests the circuit courts with general superintending control over all inferior courts and tribunals in their jurisdiction [*116*]. At the time of visit to the State in connection with this study, there was no evidence of State supervision of the probate courts.

In Louisiana, the supreme court has constitutional authority to "have control of, and general supervision over all inferior courts," including the power to assign and interchange judges and require reportings, [*117*] but there has been no implementation of this power.

In California, the chief justice is chairman of the judicial council and has power to reassign judges in order to equalize the work loads of the courts [*118*].

Judicial councils have been formed in each of 4 States to study and report on the State's judicial system and to make suggestions and recommendations for improvement.

> The time of formation varied in these four States—California, 1928; Connecticut, 1927; Michigan, 1929; Missouri, 1943. [*119*]

The California council is the only one which exercises power to make rules of procedure, require reports, and reassign judges. The Michigan council is empowered to require reports from all courts but so far has not done so from the probate courts.

In Louisiana, the Louisiana State Law Institute was created in 1938 as an official advisory law-revision commission and law-reform and legal-research agency [*120*]. It has projected an ambitious study program which includes aspects of the subject of guardianship [*121*].

All the States studied have voluntary associations of judges which provide a forum and medium of exchanging experiences. It was learned, however, that practically no special attention has been given to guardianship by any of these bodies. The Connecticut probate assembly is the only one having statutory rule-making power [*122*].

In several States the courts are required to submit financial reports to the State auditor and/or local governmental agencies responsible for financing them. One court studied in Missouri submits reports to the circuit court on the amount of fees collected each year.

Statistical reports are not required in any State except California. In the latter State the Judicial Council requires the courts to submit caseload figures, which, however, do not separate guardianship cases from other types of cases. Only one court in the study published an annual report showing a separate count of appointments of guardian.

Court rules and forms

Rules of practice to standardize guardianship proceedings have been promulgated for a number of courts. In Michigan, the supreme court has established State-wide rules of practice pertaining to probate courts. These are of a general nature, however. With reference to guardianship they merely set forth the kind of information to be furnished and the procedures to be followed in filing papers [*123*].

One court studied in Missouri has developed special rules and instructions regarding the filing of guardianship petitions, accounts, and inventories [*124*].

Standard forms have been devised in a number of States for certain legal papers pertaining to guardianship. Seven of the 12 courts studied were found to use standard, printed forms for petitions, orders of appointment, letters of guardianship, bonding and surety forms, accounts, and inventories. Four courts used some printed forms, but relied principally on the individual typing of papers in standard form. One court used no printed forms.

THE JUDGES

Qualifications and background

No State requires special background and experience from judges handling guardianship cases of minors notwithstanding the fact that the judges must deal with important legal, social, and financial interests of children. This follows upon the fact that in most cases the judges are also responsible for matters other than children's cases.

Whatever qualifications are specified in statutes are of a general nature. In Louisiana and California, where guardianship cases were heard in the district and superior courts respectively, the requirements for judges were stated in terms of residence, citizenship, legal training, and legal practice, with the additional requirement in California that the judges must have been admitted to practice before the supreme court [*125*].

Requirements in the other States, where jurisdiction was in the probate court with the exception of Florida where it was in the county judge's court, were even less specific. They involved only bonding in Florida [*126*], only county residence in Michigan [*127*], and age, citizenship, and State residence in Missouri [*128*]. The 1945 Missouri Constitution raised the

age requirement, amended somewhat the residence requirement and made it mandatory that every probate judge "be licensed to practice law in this State, except that probate judges now in office may succeed themselves as probate judges without being so licensed" [*129*].

Connecticut lists no statutory qualifications for probate judges.

All but one of the judges sitting in guardianship proceedings in the 12 courts studied were lawyers. The nonlawyer judge was a college graduate.

The incumbent judges, with the exception of the one not a lawyer, have had private or public experience in the law for periods ranging from 10 to 51 years. All but three of the judges devote full time to their court duties. None of the judges could estimate the time spent on guardianship matters of minors.

Only one of the incumbent judges has a background of work with children which specially qualifies him to understand children's problems. This judge was a probation officer before entering the legal profession and was for a time judge of the local juvenile court. Of the other judges, 12 have experience dealing with children's cases by virtue of the courts' jurisdiction over adoption and/or juvenile matters. While this experience has given them familiarity with social-investigation methods, with the use of social agencies, and with social-supervision procedure, it was significant that only one judge in this group considered applying social procedure to guardianship cases.

Selection and tenure

Judges of probate held office by election in all the States [*130*]. Nomination and election are by nonpartisan ballot in California and Michigan and by partisan ballot in the other States. The term of office is 6 years in California and Louisiana, 12 years in the case of the judges of Orleans Parish, Louisiana, [*131*] 4 years in Florida, Missouri, and Michigan, and 2 years in Connecticut. An amendment to the Connecticut Constitution in 1945 and continued to 1947, Act No. 9, p. 9, proposes that judges of probate shall be elected for 4-year terms beginning with the November 1950 election.

Some of the States provide strikingly contrasting patterns for the selection and tenure of judges of other courts in the State judicial system. In Connecticut, juvenile-court judges are appointed for 6-year terms. In Florida, circuit-court judges are appointed for 6-year terms. In Michigan and Missouri, circuit-court judges are elected for 6-year terms.

Of the judges sitting in guardianship cases, it was found that two had

come into office within the last year, three have served for 2 years; three for 3 years, four from 5 to 9 years, four from 10 to 24 years, and three for 25 years or longer.

Number of judges

In three States, it is possible to increase the number of judges as the population served by the court increases [*132*]. Accordingly, in California, 22 courts have more than one judge permanently assigned them [*133*]. Of the two California courts included in the study, one had a total of 3 permanent judges and the other 50. The latter court additionally had several judges sitting on temporary assignment. The judges of this court meet annually to elect a presiding judge, who is ordinarily the senior judge.

In Michigan, the law provides that in counties having more than 1,000,000 inhabitants there shall be six judges of probate, in counties of less than 100,000 there shall be one judge of probate, while counties with 100,000 to 1,000,000 inhabitants may have a second judge if the voters so decide [*134*]. Accordingly, one court in the study, covering a population of nearly 250,000, had two judges.

In Louisiana, each judicial district having a population of less than 70,000 is authorized a single judge, whereas the more populous districts may have additional judges in proportion to their population. Caddo and Orleans districts, as the State's two largest population centers, have the greatest number of judges, 4 and 12 respectively.

In the other three States, only one judge of probate is authorized regardless of the population or volume of court business [*135*]. However, in Connecticut new courts may be constituted whenever individual towns find that the existing courts cannot serve them adequately.

CLERICAL STAFF

The clerical staff of the courts is determined partly by statutes and partly at the discretion of the judges. A court clerk (called register in Michigan) is authorized in every State. In Missouri the judge may act as his own clerk. [*136*]

The clerk's duties are not fully set forth in law or court manuals but are generally understood to include the receipt and processing of petitions and other papers deposited with the court and the keeping of suitable records and files.

In some States he has special statutory responsibilities. In Connecticut he has power to adjourn the court in the absence of the judge and to cite another judge to sit during the indisposition of the incumbent judge [*137*]. In Connecticut he may certify and authenticate copies of documents and records, while in Michigan he may take acknowledgments, administer oaths, sign notices, and issue citations and subpenas [*138*].

In California he may issue processes and notices [*139*]. In Connecticut, Louisiana, and Michigan, he may make all necessary orders for hearings [*140*].

He is also charged by law in Missouri with collecting fees and preparing dockets [*141*], and in Louisiana with granting orders of sales, appointing tutors *ad hoc* or special tutors, and ordering family meetings [*142*].

In California and Missouri, the clerk is prohibited from practicing law in the State [*143*].

The clerks and assistants are appointed by the county board of supervisors in California, where the office of the clerk is independent of the courts. In Louisiana, the clerk is elected for a 4-year term on a partisan ballot, but his assistants are appointed by the court. In the other States, the clerks and assistants are all appointed by the judges.

There are no qualifying requirements in the statutes, except that in Michigan and Missouri the clerks are required to post bond. The incumbent clerks of eight courts were found to possess only clerical backgrounds; those of the other four courts were trained lawyers.

Assistants to the clerk are not usually selected for special qualifications or for special use in guardianship cases. They are generally people with clerical background, as recorders, typists, and filers. Some of the larger courts employ reporters, accountants, auditors, appraisers, and lawyers.

None of the 12 courts employ social workers, although the California courts by statute and some individual courts by voluntary arrangement have made use of social workers to investigate petitions for the appointment of guardians.

While staff functions are not extensively specialized in most courts, one court had 15 different clerical classifications for its personnel.

Many of the courts complained of being understaffed. Several courts have curtailed certain operations because of the shortage of staff. One court stopped sending out notices of due accounts. Another discontinued checking accounts and inventories filed with the court One court was 2 years behind in recording work. The inadequate number of court workers was generally blamed for the frequent lack of follow-up and supervisory work.

In addition to the regular clerical staff, the Los Angeles County court had an extra staff, including secretaries to the judges, court reporters for each branch court, and commissioners who acted as legal assistants to the

judges. The latter were all attorneys who were empowered by statute in certain instances to sit in the place of judges [*144*]. They normally functioned as case reviewers, going over the papers filed with the court in advance of hearings and noting questions for the judges, thus enabling the judges to hear sometimes as many as 100 cases a day.

COURT EXPENSES

Although the fee system has been largely discarded as a basis for supporting courts, it is still used for this purpose, either wholly or in part, in guardianship and probate proceedings. In all States in the study, except California, the courts were authorized to apply fees to various court expenses. In California, the fees must be turned into the county treasury, from which court expenses are met with the exception of a part of the judges' salary which is paid by the State.

In Connecticut the courts are entirely dependent upon fees for judicial and clerical salaries and for certain office expenses. Analysis of receipts from fees in 1945 [*145*] shows that only 14 of the State's 118 probate courts obtained an income large enough to pay for the services of a full-time judge and clerk at the rate of compensation paid in the juvenile court, that is, over $10,000. The two courts in the study were in exceptional financial position, as one derived the largest income in the State, $88,250, and the other the fifth largest income, $27,500.

Judges are allowed to retain fees in excess of court expenses as their own compensation. Because of this policy, the salaries of judges reached fantastic extremes in the State. A total of 58 judges obtained salaries of less than $500 each during 1945, while 4 judges reported salaries in excess of $25,000. The salaries of these 4 judges aggregated more than twice the salaries of the 5 justices of the State supreme court of errors.

The Missouri courts likewise may use fees for the salaries of the judges and clerks. However, the Missouri Constitution of 1945 [*146*] requires that fees shall be paid monthly into the State treasury or the treasury of the county paying their salaries. At the time of visit, no limit had been set on the amount that the judge could receive in compensation.

In Florida, fees may also be used to pay salaries of judges and clerks, but statutes fix a limit upon the judge's salary, and the county governments regulate the number and salaries of the clerical staff. The judges are allowed to retain 100 percent of fees to the amount of $5,000, 60 percent of the next $3,000, and 10 percent of the balance, but no judge may take more than $7,500 for his own salary. The salaries of clerks and the cost of

office expenses must be met from what is left, within the limits noted above. Surpluses must be turned into the county treasury.

The Louisiana courts are allowed to use receipts from fees to pay clerical salaries and other office expenses. The judges are paid by the State with nominal contributions from the parishes included in the judicial district.

Michigan has set a base salary for judges which varies according to the population served by the court. Judges who serve as juvenile-court judges are allowed additional salary, also determined on the basis of population served by the court. [*147*]

Each court may choose to retain fees to supplement the base pay, or turn the fees into the county treasury. If the latter is done, the judges receive an additional flat amount. Of the two courts studied, the judge of one elected to keep fees. His salary for the year was nearly a third larger than that of the judges who accepted a fixed salary.

The fee system was deplored by a number of judges because of the variable and uncertain income that it produces. Several judges stated that where judicial salaries are dependent upon the fees collected, financial considerations are likely to become motivating factors in the court's work and give the judge a sense of financial insecurity. Where the amount collected in fees is small, the result may be part-time work, irregular court sessions, infrequent office hours, and divided interests. There is further danger that the fee system may deter the free use of the courts by those who want to help children through guardianship.

COURT FACILITIES

Since courts of guardianship jurisdiction do not specialize in children's cases, their facilities are not specially designed for the convenience of children or with a view to the impression they may make upon children.

Location

All the courts studied were located in a place conveniently accessible to the population served. Two of the courts had established branches. The Jackson County, Missouri, court maintained the main court in Kansas City and a branch in Independence, which is the county seat. The Los Angeles County court was divided into six branches, the main one located in the Los Angeles municipal center. The other courts of the study were located in the principal towns of the territories covered.

Days open for business

By statute, the courts are required to be open for business during usual business hours. All the courts visited were open full time Monday through Friday and half day on Saturday. It is possible to bring guardianship matters before all the courts at any time. One California court, however, has set Mondays especially for hearings on guardianship petitions.

Housing

All the courts of the study were housed in county or municipal courthouses. The courtroom and clerical office usually adjoin. At the main branch of the Los Angeles County court, however, the courtroom was located in a temporary building while the office of the clerk was in the county hall of records building.

A number of courts complained of inadequate space. In some courts the judge's office doubled as a courtroom. Adequate waiting-room space was frequently lacking. The clerk's office at several courts was greatly overcrowded. A number of courts maintain part of their records in basements or annex buildings which were not always easily accessible.

Records and files

Guardianship records consist for the most part of legal papers. They usually include three kinds of material:

1. The records of the appointment of the guardian, including the petition, notices, citations, and affidavits, the order of hearing and appointment, the bond, inventory, and letters of guardianship.
2. The records of supervision, including periodic accounts, orders regarding investments, sales, expenditures, and other transactions pertaining to the estate.
3. The records of discharge including final accounts and settlements, the minor's release, and the order of discharge.

The records of related children are maintained in family folders. Seven courts use flat legal-size folders. The other courts use an accordion type of jacket into which papers are folded and tied. Folders or jackets are num-

bered serially and kept in steel cabinets together with other probate-record folders.

No special provisions have been made for filing separately social information obtained on a child in the form of investigation reports.

Except for one court which was in process of converting to a kardex system, all the courts maintained indexes in book form which make difficult any strict alphabetical listing or cross-indexing. None of the courts maintain separate indexes of guardianship cases of minors. Entries made in dockets and index books vary with individual courts. Most courts do not distinguish guardianship of person from guardianship of estate and some of them failed to distinguish guardianships of minors from guardianships of incompetent persons.

6. The Process

Under the law, the courts have a twofold function in guardianship. The first is a judicial one. It entails the determination of the child's need for guardianship and, when there is need, the appointment of a suitable guardian over his person, estate, or both. The second is an administrative one. It entails the maintenance of a proper record of the child's wardship and continuing superintendence over the guardian to make sure that he serves the child's interest and welfare at all times.

The courts are supposed to carry on these responsibilities through the processes of appointing, supervising, and discharging guardians. The specific activities involved in each process will be discussed in relation to the requirements of the State laws effective during 1945 and the actual policies and procedures found to be followed by the 12 courts that were visited in connection with this study.

It should be noted at the outset that strict adherence to statutory requirements and forms is not always observed in practice in guardianship cases. Guardianship proceedings are generally conducted on an informal basis and with the welfare of the child in mind, the courts are liberal in construing the laws setting forth the procedural requirements applicable to those proceedings. Nonetheless, serious and irreparable damage may result to the child or his property if the spirit and manner of court functioning is allowed to become casual to the point of indifference or if practices are allowed to diverge from legal requirements to the extent of depriving the child of the protection that the law provides him.

THE APPOINTMENT PROCESS

The appointment process is described in statutes as a sequence of steps beginning with the filing of the petition for the appointment of a guardian and ending in the issuance of letters of guardianship. In actual practice, as will be shown, the courts frequently abridge the process by dispensing with certain steps generally or in certain cases.

Time involved

Table 15 shows that the appointment process is accomplished with dispatch in the majority of cases. More than a third of the cases handled by the courts in 1945 were completed within a single day. Practically another 20 percent were completed within a week. That this speed was probably not always conducive to a well-considered judgment is indicated by the fact that the cases in which there was a hearing tended to take a longer time to decide. For instance, nearly 6 out of 10 cases in which there was a hearing took 15 days or more to complete, but only a little more than 1 in 10 cases in which there was no hearing took that long.

There were other delaying factors. A frequent one in estate cases was the prospective guardian's slowness in filing the required inventory in Louisiana or in posting the required bond in the other States of the study.

In cases involving the child's person, delays were often occasioned by the service of notice to interested persons, verification of the information of the petition, and, more frequently, the difficulty of getting opposing petitioners to resolve their differences.

In a number of instances in California the delay was caused by the court's making trial placements of the child with various persons who desired guardianship, by way of testing each candidate's suitability.

Filing the petition

Three States in the study have statutory provisions for reporting children who need guardianship. In Missouri, the judges of any county court, justices of the peace, sheriffs, and constables are duty bound to bring such children to the attention of the court. [*148*] In Louisiana, any person who becomes aware of a child's need for guardianship is expected to inform the court by initiating proceedings within 10 days. Relatives residing in the same parish as the child are bound to apply for appointment and are made responsible for what happens to the child in the interim. [*149*] In Connecticut, town selectmen may report children needing guardianship [*150*].

Actually, however, the guardianship proceeding is initiated by the filing of a petition by someone who desires the guardianship. Statutes list various persons who may file the petitions in each State but the Florida law is not as specific as the laws of the other States. [*151*]

In all the States studied, except California, the courts themselves may initiate the proceeding. In Connecticut, the judges of probate may initiate proceedings when the minor is under 14 years of age, or when a minor

Table 15.—How Long It Takes for the Court to Act: Interval between the date of petition and the date of appointment of guardians of minors before 12 courts in 1945 for appointment of guardians, by type of proceeding

Interval between petition and appointment	Total		When hearing was held		When no hearing was held	
	Number	Percent	Number	Percent	Number	Percent
Total	2,957	100	1,547	100	1,410	100
Same day	1,039	35	125	8	914	65
1 to 2 days	218	8	114	7	104	7
3 to 7 days	336	11	206	13	130	9
8 to 14 days	277	9	212	14	65	5
15 or more days	1,087	37	890	58	197	14

14 years of age or older has not made his own choice, and when a minor residing elsewhere has an estate in the district of the court.

Except in Florida and Louisiana, minors 14 years of age or older have the right to petition on their own behalf. Parents, the surviving parent, or other relatives, may petition in all States, while friends or other interested persons additionallly may petition in Michigan, Missouri, and California.

It will be seen from table 16 that in practically 9 out of 10 cases the petitioner was the minor himself, a parent, or a relative. In Michigan the minor was the principal petitioner for all three types of guardianship, because it was the policy of the local courts to encourage minors to act on their own behalf if of age of choice. In Connecticut, minors constituted the largest proportion of petitioners for guardianship of person.

Parents accounted for about two-thirds of the petitions involving estates. Mothers were petitioners two and a half times as often as fathers. The parents jointly were petitioners in approximately 4 percent of the cases. All but two of these cases involved property. There were no instances of joint parental petitions either in Michigan or Missouri.

Relatives and other nonparent petitioners were especially active in guardianships of person. Their petitions in this group constituted nearly three-fourths of the total.

A total of 44 petitions were filed by social agencies. These filings were with the courts studied in Connecticut, Michigan, and California. Of the total, 29 were for guardianship of estate, 14 for guardianship of person, and 1 for guardianship of both person and estate. All but 3 of the total were filed by public social agencies. In 19 cases the agency nominated someone other than itself as guardian.

Table 16.—Who Are the Petitioners for appointment as guardians of minors before 12 courts in 1945, by type of guardianship

Petitioners	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	2,957	.....	675	.....	1,507	.....	775	.....
Total reported	2,956	100	675	100	1,506	100	775	100
Minor	287	10	98	15	174	12	15	2
Parent person	1,509	51	84	12	991	66	434	56
Other relative	690	23	309	46	112	7	269	35
Non relative	300	10	167	25	86	6	47	6
Joint petitions:								
Including both parents.	125	4	2	(1)	120	8	3	(1)
Including one parent.	31	1	7	1	20	1	4	(1)
Including no parent.	14	1	8	1	3	(1)	3	(1)
Total not reported	1		0	.....	1		.....	.....

[1] Less than 0.5 percent.

It is interesting to note that the courts acted on their own motion in only two cases, one in Connecticut and the other in Michigan.

> One case involved a little girl 8 years old for whom the court had approved a settlement of a claim for injuries incurred in an accident. The amount settled on the child was a little more than $500. During the settlement proceeding the court learned that the child's father was dead and the mother was in a mental hospital. The child was living with a grandmother. The court requested the latter to become guardian of estate but left the guardianship of person unsettled despite the obvious fact that the child's surviving parent was not competent to function as natural guardian.

Family meeting in Louisiana

At this point it is well to note the unique provision of Louisiana law calling for a family meeting to nominate a guardian (called tutor) in the event of the father's death.

At one time the family meeting was mandatory [*152*] but the practice became such a travesty that it was made optional in 1934 [*153*] and is now utilized only occasionally.

In 1945, family meetings were held in connection with the guardianship of less than a dozen children in the two courts studied. In each case five relatives or "friends" were presumed to have deliberated and chosen the nearest blood relative qualified and willing to accept the appointment. [*154*]

In actuality, however, the persons assembled often do not know the child, nor do they meet together and deliberate a proper selection. In several instances, it was discovered, the group was chosen at random in the corridors of the courthouse.

In one case the lawyer advised the prospective guardian to bring to court five persons who will sign the "process verbal" approving his appointment. The lawyer asked the group if they felt that the candidate should receive the appointment. Affirmative answers were given without comment or discussion and each person affixed his signature to the "process verbal."

In another case in which a family meeting was reported, the lawyer stated that he "went through the motions" only because the judge insisted on it. It has been his experience that the family meeting is an unnecessary, costly, and useless procedure. He pointed out that it entitles the lawyer to additional fees for legal and notary service.

Several judges agreed that the family meeting added to the cost of guardianship without providing additional safeguards. One judge believed that the idea of having relatives nominate the guardian was a step in the right direction of unifying family action for the protection of children, but recognized that the practice had degenerated into a meaningless and extravagant routine.

The petition

The petition for the appointment of a guardian is presented to the court in a variety of forms setting forth varying items of information. Seven courts employ printed forms. One Michigan court provides different forms for guardianship of person and for guardianship of estate, and both Michigan courts provide a special form for minors petitioning on their own behalf.

The petition generally calls for identifying information concerning the minor, the prospective guardian, and the petitioner, and a description of the estate, where there is one. The sample petition on pages 85 and 86 illustrates the kind and scope of information usually elicited by the petition.

The petition may be filled out by the petitioner himself, his attorney, or a clerk of the court. Practices vary, however. Occasionally petitioners come to court for advice and assistance in filling out the petition. Several courts have discouraged this practice largely on complaint of local attorneys that it was not good legal practice for the clerks of the court to give advice regarding the preparation of legal documents. In one community where

Attorneys are requested not to use this form in an incompetent proceeding.

Stevens & Stevens
Attorney for Petitioner.
921 Stinson Building
Address.
Monroe 8429
Telephone.

FOR FILE STAMP

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

Case No. 83965

In the Matter of the Estate and Guardianship of

Jane Marie Donovan Minor

PETITION FOR APPOINTMENT OF GUARDIAN

To the Superior Court of the County of Los Angeles, State of California:

Petitioner Mrs. Roberta McCabe represents as follows:

That your petitioner is the paternal aunt (State Relationship) of said minor child;

That the names and addresses of the parents of said minor child are as follows:

Father John Donovan 8651 Dolphin Avenue, Reno, Nevada

Mother Deceased

That said Jane Marie Donovan (Minor) is the age of fourteen years

That said minor is at present under the care of Mrs. Roberta McCabe, residing at 81 Hacianda Way, (Post-office address) Beverly Hills, California.

That the only relatives of the said minor child residing in the State of California are George Baker, maternal uncle, 3298 Mercedes Boulevard, Los Angeles, California, Mrs. Peter Blewitt, maternal grandmother, 216 Down Street, Sacramento, California.

That the said minor has no guardian legally appointed by will or otherwise; and has estate which needs the care and attention of some fit and proper person.

That the property of said estate consists of the possible inheritance from the estate of her mother, Jeanne Blewitt Donovan, who died in the City of Los Angeles, County of Los Angeles, State of California, on the 2nd. day of January, 1945, amount of which is unknown to petitioner.

WHEREFORE, your petitioner prays that he be appointed guardian of the person and estate of said minor.

Dated March 21, 1945 (Mrs.) Roberta McCabe
Petitioner.

Nomination by Minor

I, Jane Marie Donovan, a minor fourteen years of age and over, do hereby nominate and request the court to appoint Mrs. Roberta McCabe my guardian.

Dated March 21, 1945.

Jane Marie Donovan
Minor.

NOTE:
Before making the appointment, such notice as the court or a judge thereof deems reasonable must be given to the person having the care of the minor and to such relatives of the minor residing in the state as the court or judge deems proper. In all cases notice must be given to the parents of the minor or proof made to the court that their addresses are unknown, or that, for other reason, such notice cannot be given. Sec. 1441 Probate Code

there was no free legal-aid service available, the local bar association set up a special committee to provide help to petitioners who cannot afford the services of an attorney. Several courts indicated that it is their custom to help fill out the legal papers required in guardianships of persons, especially when the minor acts as his own petitioner. One Missouri court has issued a manual of instructions for the preparation of petitions.

Use of attorneys

It is common policy for the guardianship courts to encourage the petitioner to hire a lawyer.

> In one case a father inquired about the process of securing appointment as guardian of the small estates belonging to his three children. The clerk advised him to see an attorney. The father was reluctant to do so because he felt the attorney's fee would make a substantial dent in the children's estates. Having some experience administering his deceased father's estate, he believed he could handle matters himself with a little clerical assistance. After much persistence the clerk showed him a completed petition which he followed in preparing his own petition.

When retained, the attorneys prepare the petition and other legal documents, advise the judge concerning who is entitled to receive notice, and frequently serve notice through their own offices. They also attend hearings, give the judge their opinion on the fitness of the proposed guardian, and make arrangements for bonding and surety. To them are usually left the tasks of inducting the guardian into his duties, advising him concerning problems of estate management, and seeing that he files proper accounts with the court.

The competence, in some of these matters, of attorneys engaged in general practice has been challenged in an article by a lawyer and one-time clerk of a probate court who cites the general lack of skill and familiarity of some of these lawyers with problems of accounting, management, and care of property [*155*].

Not infrequently the attorney receives appointment as guardian in his personal capacity. This occurs especially in cases where relatives have failed to qualify. At some courts the clerk has a list of lawyers who have indicated their willingness to accept guardianship of estates. The comment of a clerk is significant in this connection. "It is easy to get people who are willing to act as estate guardians—any number of lawyers are usually available—but very hard to get people willing to assume responsibility for guardianship of person."

Apparently guardianship seldom raises difficult questions of law. One

attorney could recall only one case in many years of practice that had involved a point of law.

> In this case, a nonresident child had petitioned the court to terminate guardianship over his estate which was located in the county. The child had attained legal age in the State of his residence. The guardian was prepared to make the transfer, but the attorney was able to point out that this could not be done lawfully as the child was still not of legal age under the law of the State in which the property was located.

In numerous instances which came under study, it appeared that the attorney gave the guardian the most casual kind of induction into his responsibilities. In many cases contact with the guardian became extremely infrequent after the appointment, even in instances where the attorney continued to receive a retainer.

> The guardian admitted that she was very confused about her responsibilities. She had not known that she had been appointed guardian over the child's person as well as his estate. The attorney had talked to her for a few minutes while they were leaving the court, but she could recall little of what he had told her except that it had to do with keeping the stubs of checks to substantiate the withdrawals she made from the bank. She had seen the attorney a few times since but was reluctant to ask questions as she "feels stupid" about legal matters.

It was not possible to determine accurately the extent to which attorneys were used in guardianship cases, as this information was not always available. In Florida, however, the records revealed that nearly 75 percent of the cases were represented by attorneys; and in Louisiana and California there was legal service in practically every case, either from private attorneys or from other sources such as local public defenders or legal-aid societies.

The Office of Public Defender of Los Angeles County has a civil division which is frequently used in guardianship actions. This office serves children referred by certain local agencies, including the county welfare department, county probation office, public hospitals, Army and Navy recruiting offices, and the marriage-license bureau. All agencies but the last mentioned must make the referral in writing.

The referral letters must state the name and age of the child, the name, address, and relationship of the proposed guardian, the names, addresses, and marital status of parents and other relatives living in the State, and the reason why guardianship is desired. The referral system was instituted because the office is not equipped to make investigations. It was not known whether the referring agencies made an investigation, but several instances were cited where the appointments were later discovered not to be in the interest of the child. In one instance it was found that the guardian lived with the ward in a homosexual relation.

The Public Defender may serve only children who cannot afford to

employ legal counsel. The guardianship must not involve estates worth over $100. The service is limited to the appointment proceeding. It includes preparing the petition, serving notices, and representing the minor at the hearing. The office indicated that it handled 247 petitions in 1945. The great majority involved guardianship of person for the purpose of giving legal consent to medical care.

Another agency in Los Angeles County which provides legal service in guardianship is the Legal Aid Society. This agency usually limits service to children who have estates valued below $800 or whose monthly income is less than $35. It was not possible to determine the extent of service rendered in 1945, as the agency statistics are not detailed by type of case handled. Court records revealed a total of 19 cases in 1945 for which the society was the legal representative.

For the same reason as the Public Defender's office, the society does not accept cases directly. Referrals are limited to social agencies. Most cases are referred by the county welfare department and the Veterans Administration regional office. The society provides the same kind of service as the Public Defender's Office.

Attesting the petition

The petition is required to have the signature of the petitioner. In Louisiana, the presenting attorney also signs it. There is notarization only in Connecticut and California.

The clerk of the court receives the petition. (The term clerk will be used in this discussion to refer to the clerical function of the court, since it was found that the courts have varying numbers of clerks.) He is frequently the court's only contact with the petitioner. It is his responsibility to determine whether the court is to take the petition under consideration. His interview with the petitioner, and his scrutiny of the petition, is therefore directed towards discovering whether the court has jurisdiction and whether the minor needs guardianship.

Specifically, he attempts to find out the child's age, his place of legal domicile, his present residence, and location of his property, and whether he is without natural or legal guardianship. In Louisiana and California, where attorneys invariably prepare the petition, the clerk accepts the averments of the petition without question or check.

At one Connecticut court the clerk makes a special check of the petitions filed by minors on their own behalf. If it is suspected that the minor is trying to sidestep disapproving parents by misrepresenting himself as an orphan, the clerk will request the local welfare agency to verify the parental status.

No court clears petitions against the records of other courts or divisions dealing with children or with the local social-service exchange.

Inventory and appraisement in Louisiana

Another unique provision of the Louisiana guardianship law requires that the inventory of the child's estate be filed in advance of the appointment of the guardian [*156*]. The inventory must be begun within 10 days of the court order. A standard form is provided for the purpose. The inventory must be recorded in the mortgage books of all the parishes in which the guardian has mortgageab'e property. [*157*]

The inventory is made by appraisers appointed by the court [*158*]. Usually three appraisers are appointed, one of whom may be the lawyer representing the petitioner. The other two are supposed to be friends of the family willing to render the service without charge. This is not always the case, however. In one case each appraiser was allowed $5 for appraising a small estate consisting solely of insurance money left by the deceased father.

In estates valued at not over $500 the inventory and appraisement may be dispensed with if certain procedures are followed [*159*].

An inventory was fi'ed in all but 12 percent of appointment cases and 10 percent of discharge cases before the courts studied in 1945. In practically all the cases in which an inventory was not filed, a description of the property was accepted in its stead. In some instances the court waived inventory on request of the Veterans Administration. There was one instance where the inventory was filed after the appointment was made.

Notice and consent

The serving of notice is a time-honored legal device for informing interested persons of their right to participate in a matter before the court. The statutes of all the States studied require that certain persons shall be notified of the pendency of a guardianship proceeding. The Florida laws only by amendment in 1945 [*160*] provided for notice.

Parents are generally entit'ed to notice but may not always receive it. Notice is usually dispensed with when both parents are parties to the petition. Several courts dispense with notice to parents in cases where the appointment is for the purpose of giving legal consent to marriage or entry into military service, particularly if the minor can convince the clerk that the parents approve the plan but are not available to consent personally.

Minors 14 years of age or older are entit'ed to notice in 4 States, California, Connecticut, Michigan, and Missouri. A California judge indicated that some judges in the State are interested in amending the law to entitle all minors to notice regardless of age, so that guardians *ad litem* would have

to be appointed to represent them whenever their interests are involved in an action before the court.

In practically all the six States the courts will notify the Veterans Administration if the child's estate includes veterans' benefit funds. No court gives notice to the State welfare department or the local public welfare agency if the child has no parents or is reported not living with them.

The manner of notice varies. It may be served personally, by registered mail where the address is known, by display on the courthouse bulletin board, or by publication in a newspaper having circulation in the last known place of abode of the person entitled to notice. Several judges expressed concern about the cost of the last-mentioned method, which is often required by statute.

To save costs in the matter of notices, one court telephones persons entitled to notice, another accepts waivers in lieu thereof, and a third allows the attorney to use his discretion about notices.

Table 17.—Participation of Minors and Parents in proceedings for the appointment of guardians of minors before 12 courts in 1945, by type of participation and type of guardianship

Participants by type of participation	Appointments							
	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Minors:								
Eligible to participate (14 years of age and over).	1,254	100	352	100	611	100	291	100
Participated as—								
Petitioners	287	23	98	28	174	28	15	5
Endorsers	862	69	228	65	370	61	264	91
Nonparticipants	105	8	26	7	67	11	12	4
Ineligible to participate (under 14 years of age).	1,703	.....	323	.....	896	.....	484	.....
Mothers and Fathers:								
Eligible to participate	3,325	100	666	100	1,887	100	772	100
Participated as—								
Petitioners	1,804	54	103	15	1,254	67	447	58
Endorsers	289	9	79	12	137	7	72	9
Nonparticipants	1,232	37	484	73	496	26	253	33

Table 17 shows the extent to which minors and parents legally entitled to notice have participated in the appointment proceeding by acting as petitioners or by endorsing the petition. Interestingly, minors are shown to have participated more heavily than parents. They were active in approximately 9 out of 10 instances in which they had the right to participate. On

the other hand, parents eligible to participate did so in less than two-thirds of all cases and in only a little more than a fourth of the cases in which guardians of person only were appointed.

Social investigation

Of the six States in the study, only California provides by statute for social investigation of petitions for the appointment of guardians. Enabling legislation was enacted in 1941 [*161*]. The background of this legislation and its use by the courts visited will be discussed in the chapter that follows.

In several other States there was evidence of increasing recognition of the presence of social factors in guardianship cases and the need for social study to provide a basis for determining the child's need for guardianship and the proposed guardian's fitness. These developments also will be discussed in the next chapter.

It is interesting to note here that the appropriateness of the court inquiry into the fitness of the guardian before making an appointment has been pointed out by the Florida State Supreme Court in *Watland* v. *Hurley* [*162*].

> "When the custody of a minor child is involved unquestionably the court may inquire into both the present and past history of the one seeking or being recommended for such guardianship. Inquiry in such cases goes to the moral, religious, material, and physical condition of the proposed guardian and it becomes the duty of the Court to make diligent search as to all these factors."

It was found, however, that by and large, in the absence of a controversy, the courts tend to rely on the petition, the advice of the attorney, and the hearing, where one is held, for the basic information for deciding guardianship questions.

Temporary guardian

To give the courts time to acquaint themselves with the facts concerning the child's needs and the guardian's fitness, there is provision in some States for the making of temporary arrangements for the child. Three States in the study, Michigan, Louisiana, and California, have provided for the appointment of a temporary guardian if appointment of the permanent guardian must be delayed for any reason [*163*].

The Michigan law does not specify the particular circumstances in which a temporary guardian is to be named, but the Louisiana law specifies the following: If the mother, on remarrying, loses guardianship rights; if the mother is dead and the father has disappeared; and if one parent disappears,

leaving the children of a former marriage. In California, the appointment is to be made whenever the welfare of the minor is likely to be imperiled if he is allowed to remain in the custody of the person then having his care.

The courts studied in Michigan and Louisiana have not developed a regular practice of appointing temporary guardians. The two courts of California appointed temporary guardians rather frequently to prevent the contesting parties from interfering with the care of the child or to allow time for social investigation. One California court in the study uses temporary guardianship as a device for testing the fitness of the various candidates for the appointment by placing the child with each one for a short period of time. Social supervision generally is not provided in these cases.

The hearing

At 9 of the 12 courts, hearings occur only in contentious cases. At 5 courts, they occur so rarely that the court staff could not recall any in recent years. However, several courts use informal devices for acquainting themselves with the ward's situation and with the proposed guardian's interest in him and ability to meet the obligations of guardianship.

These are most often in the nature of private discussions and conferences. One judge in Missouri frequently arranges private conferences with the guardian and ward. A Louisiana judge takes the occasion of signing the order of appointment, when the guardian and attorney are usually present, to interrogate the guardian and "size him up."

The Connecticut courts of study hold hearings only in contested cases. The following hearing was observed at one court.

> The case involved the appointment of a guardian of person of a 9-year-old girl. A maternal aunt's petition for guardianship was opposed by counsel for the father, who was living in another State. Present besides the two attorneys were the aunt and a number of relatives, on both sides of the family.
>
> The hearing was a second continuance. It brought out that the girl had lived with the aunt practically from birth. The aunt had supported her without any financial help from the father. It was acknowledged by the father's attorney that the aunt had provided well for the child. However, a sister of the father testified that the aunt had not welcomed any help from the father and had discouraged any contact with the child either by the father or by paternal relatives.
>
> For nearly an hour the opposing lawyers argued the technical aspects of the case. The judge interrupted several times to emphasize the court's primary concern, for welfare of the child. Finally, he ordered another continuance to enable the father's attorney to obtain a statement from the father.

One Michigan court holds hearings on all applications for guardianship of person. Hearings are also held in estate cases where the parents have not waived the hearing. The hearings are usually conducted informally.

All close relatives of the child who live in the county are expected to attend. The judge attempts to use the hearing to interpret the meaning and legal requirements of guardianship. He usually starts the hearing by asking for verification of the facts of the petition. He then has the prospective guardian state his plans for the child and calls for comments from each person present regarding the soundness of the plans and the candidate's ability to carry them out in the interest of the child. If the child is 14 years of age or older, he also is asked to give his opinion and comments.

This court's use of the hearing to establish a guardianship free from family disagreements and misunderstanding is well illustrated in the case of two children whose aunt petitioned for guardianship after their parents' deaths.

> Other relatives questioned the aunt's ability to handle the estate and doubted whether she would make a good guardian of person for both children as she seemed to prefer the girl over the boy. They hired a lawyer to contest the petition.
>
> The court moved into this situation slowly and carefully. The probation officer attached to the juvenile division of the court was asked to make a social investigation. This revealed a stable, financially secure, and emotionally close relation between the aunt and the two children throughout their lives.
>
> The court scheduled a hearing 3 weeks after the petition was filed. At the hearing, which was attended by practically all the immediate relatives, each person was given an opportunity to express himself. The judge steered the discussion into a consideration of social and financial plans for the children by raising many questions based on the information supplied him by the investigation report.
>
> The discussion brought out substantial agreement that the property belonging to the children could best be handled by a trust company.
>
> It was also agreed, after a careful weighing of the comparative abilities of each relative to meet the needs of the children, that the aunt had the most to contribute to their welfare.
>
> The hearing seemed to "clear the air" and bring about better understanding of the responsibilities of guardianship.

Hearings are held in all guardianship cases at the two California courts in the study. The practice at both courts is to allow the attorney to arrange the hearing date in terms of the congestion of the court calendar, making due allowance for time required for the proper serving of notices.

The hearings are conducted in open court. Several hearings were observed during the period of study. These indicated that the attorney is usually the most active participant. None of the hearings that were attended involved a contest; consequently all were disposed of in a cursory manner within a few minutes.

The judge usually questioned the petitioner and the attorney regarding the reasons for the application and the qualifications of the proposed guardian. If other interested parties were present, they were asked for their opinion. If the child's parents were reported alive they were usually expected

to be present at the hearing even if they had indicated approval of the appointment by waiving notice or signing an endorsement.

> However, in one case involving the transfer of guardianship of person over a 2-year-old child to a nonrelated person, neither parent appeared at the hearing. The attorney offered the excuses that the father could not get time off from work and the mother had a cold. The judge accepted the excuses and the hearing proceeded. It resulted in approval of the application on advice of the attorney. A social study had not been ordered in this case.

One court makes a point of insisting upon the minor's attendance at the hearing because it is believed to have the salutary effect of impressing upon him that the State has a concern for his welfare.

Selection of the guardian

Courts have latitude to select guardians within the limits specified in statutes. These limits are in the form of a recognition of the minor's right of choice, the priority rights of certain blood relatives, and certain qualifying requirements.

Under statute, minors 14 years of age or older have the right to choose their guardians in California, Connecticut, Michigan, and Missouri, subject to court approval [*164*]. In Connecticut and California the court's approval is mandatory unless the minor's choice is not a suitable one. In these States, too, minors may ask a change of guardians upon reaching the age of 14. In Missouri they may request a change only if the testamentary guardian declines to serve longer or his appointment is revoked.

The laws of three States give certain persons preference to appointment. Connecticut statutes list preferences only for guardianship of estate [*165*]. For this type of appointment, the father, surviving mother, and guardian of person, have preference in the order listed.

The Louisiana statutes contain an elaborate order of preference giving priority to blood relatives in the order of the degree of relationship and the sex of relatives of the same degree. Further preference is given testamentary nominations and "persons protecting a foundling or abandoned child." [*166*]

The California statutes also provide an elaborate order of preference [*167*]. Listed first are parents, then testamentary nominations, then the persons already acting as trustee of a fund to be applied to the child's support, next relatives, and finally, if the child is a ward of the juvenile court, the probation officer. When parents claim guardianship adversely, preference is to be given the mother if the child is of "tender years" and to the father if the child is of an age where he needs education and vocational preparation.

Certain persons are specifically excluded from appointment in four States. [*168*]

California excludes persons ineligible to citizenship and alien-owned corporations. In Florida, the judge, in certain instances, may not appoint himself or any member of his family. Missouri excludes court personnel, minors and other incompetents, nonresidents, and persons of different religion from that of the child's parents.

Louisiana excludes or excuses public officials, educators, ministers, relatives in the fourth or more distant degree, the aged, infirm, and incompetent, those who have opposing interests, and those who already have two tutorships.

Four of the six States in the study have enacted the Uniform Veteran's Guardianship Act, or parts thereof, which provides that no individual shall be guardian of more than 5 wards at one time unless all the wards are members of the same family. Michigan, however, allows an individual to be guardian of 10 wards. [*169*]

Three States have some statutory requirements with respect to the qualifications of guardians [*170*].

The sum and substance of the Connecticut provision consists of the adjective "proper."

The Michigan law describes the guardian of estate as standing in a position of confidence and trust with respect to his ward, and in consequence requires him to be a resident of the State and a citizen of the United States. He may be the husband of the minor. The guardian of person is required to be a "respectable and suitable" person of "sufficient means."

The Louisiana law indicates that if no relative entitled to appointment is willing to accept, the court may appoint any "discreet and responsible" person.

In point of practice the courts seldom exercise their discretionary powers to select guardians. Unless challenged, the petition of the person who files first is accepted. In the event of challenge, the court may, if the circumstances warrant it, dismiss the petition. That may close the matter unless the opposing party or someone else files a substitute petition.

Where the court has to decide between opposing petitions the general practice is to give a parent preference over another relative and a relative over a nonrelative. Exception is sometimes made in guardianships of person in favor of the person who has cared for the child a long time. Exception may be made also in cases involving large estates considered as requiring expert management, in which cases a bank or trust company may be given preference.

Generally the applications of parents and close relatives are accepted by the courts without question. Persons having guardianship over one child of

a family are usually given preference when another child of the family requires guardianship.

Undertutor in Louisiana

The appointment of undertutors is peculiar to Louisiana. Under State law an undertutor must be appointed at the same time as the tutor or guardian.

The undertutor's role is defined as that of a "watchdog." He is expected to advise the court of any actions of the guardian that may be injurious to the interests of the minor. He must see to it that the tutor submits annual accounts and is expected to initiate proceedings for the removal of the tutor whenever that becomes necessary. Full guardianship does not devolve upon him when the office of guardian becomes vacant, however. [*171*]

Despite these important responsibilities, the undertutor is not required to have any specific qualifications. Frequently he is another relative, or a friend, but he is also likely to be anybody willing to accept appointment.

In many instances the undertutor functions simply as a witness, assuming no responsibility after the appointment is made.

One study revealed an undertutor who took his responsibilities seriously.

> The undertutor is an intelligent young man in his late twenties. He has known the guardian and wards as neighbors for many years. Since he likes them, he was glad to assume the undertutorship when the guardian asked him to. His wife also knows the family well, and there is frequent visiting between the two families.
>
> The undertutor said it is his understanding that his job is to see to it that the children are properly cared for, reared, and educated, and that their financial interests are guarded.
>
> He talked seriously of his responsibilities, and, although his observations are made casually in the course of ordinary social relations, it was quite clear that he is constantly evaluating the situation. He is fully aware of how the family is getting along. The guardian apparently does not hesitate to discuss problems with him.

However, the general attitude in the communities visited was that the office of undertutor has deteriorated to a mere formality which, in most cases, does not serve the purpose of safeguarding the child under guardianship.

Order of appointment

If the judge decides to grant the petition and appoint the proposed guardian, he has an order of appointment prepared for his signature. This order does not have full force until the guardian has posted some kind of bond and, in some States, has taken the required oath of office.

Bond and surety

The bond is considered the cornerstone of protection for the minor under guardianship, and is probably the most universally observed legal requirement in guardianship procedure.

Bond is required in all States from guardians of estate, but in California the testamentary guardian of estate is exempted [*172*]. However, bank and trust companies whose liability is covered under banking regulations are generally exempted from giving bond in individual cases. The public guardian in Los Angeles County and the estate administrator in Connecticut are likewise exempted.

Bond is required also of guardians of person in California, Missouri, and Connecticut, [*173*] but the courts of study in the first two States generally waive this requirement. In Connecticut the courts of study have fixed bond in guardianships of person at $100 secured by personal surety. The surety is waived when the ward is 14 years of age or older.

Interestingly, one Michigan court of study requires bond from the guardian of person as a matter of court policy. The amount of bond is $10 to $25 with personal surety.

In Louisiana, an extract of inventory may be substituted for the bond. Generally, this does not seem to be a satisfactory substitution, as it provides no protection in cases where the estate consists of personal property. In cases where the estate consists of real property, the extract serves to block the sale of the property even though sale may be advantageous to the estate.

When an extract of inventory cannot be given, in Louisiana, bond is supposed to be given. However, the courts have discretion to waive bond when no one will accept the apointment under the condition of bond. [*174*]

Where the estate is valued under $500, the Louisiana courts may accept a description of property in place of the extract or bond. This is most commonly done in Veterans Administration cases.

None of the other States provide for the waiving of bond, but the California courts in practice sometimes waive bond in cases involving small estates placed under parental or testamentary guardianship.

In several States, the court orders the conversion of the estate into government bonds or bank accounts which are made subject to court supervision. This practice has arisen in Michigan and Louisiana as a matter of individual court policy and in Florida and California under statutory authority. [*175*]

The amount of bond is determined by the value of the estate, its nature, and the kind of security given. The value shown in the petition is usually accepted as the basis for the bond. Where the estate is shown to consist of monthly payments from benefit or trust funds, the bond is fixed in an

amount covering an estimated annual income. Where real estate is listed, the value shown is subject to appraisal before bond is set. Where cash and securities are shown, the court examines the bank books and securities to verify their value. In several States the probable annual rents, issues, profits, and other income are taken into consideration.

In general, the amount of bond is supposed to be adequate to cover any possible losses resulting from mismanagement. Under the laws of Connecticut, Florida, Michigan, and Missouri, the court has discretion to fix the amount. In Florida before the 1945 Guardianship Act the judge became personally liable for losses not covered by the bond [*176*].

Bond on real estate is usually set at a nominal amount, because special bond is required whenever the property is to be sold or mortgaged. For other property the bond varies with the type of surety. Bond on personal surety is generally fixed at an amount twice the value of the estate, whereas bond on corporate surety is set at an amount equal to the value of the estate.

The amount of bond may be increased or reduced whenever a change is indicated by change in the value of the estate. None of the courts in the study, however, was found to have a definite procedure for maintaining the adequacy of the bond.

Table 18 indicates that the adequacy of bond is not always systematically checked. In more than a fifth of the discharge cases at time of discharge the amount of bond was below the indicated value of the estate. In one case there was a $3,000 bond on an estate consisting entirely of personal property which had been inventoried to be worth $12,000. In another case an estate valued at $22,000 was covered by a bond of $3,500.

Table 18.—Adequacy of Bond in Estate Cases: The amount of bond related to the capital value of estates of minors who were before 12 courts in 1945 for appointment or discharge of guardian, in terms of a 10 percent differential

Amount of bond related to capital value of estate in terms of 10-percent differential	Appointments		Discharges	
	Number	Percent	Number	Percent
Total	2,282	100	825	100
Bond inadequate by 10 percent or more	399	17	179	22
Bond adequate by 10 percent or more	496	22	191	23
Bond within 10 percent of value of estate	613	27	177	21
Bond and/or capital value unknown	774	34	278	34

The surety is legally liable for any default or debt of the guardian up to the amount of the bond. Because of the greater risks involved in personal surety, the courts generally favor corporate surety, especially in large estates.

Usually two personal sureties are required, but some courts will accept one surety if the value of his collateral is sufficient to cover the bond.

Personal sureties are usually friends or relatives of the guardian. In a number of cases one parent was found acting as surety for the other who had been designated guardian of estate.

Table 19.—Extent of Bonding required from and filed by guardians of minors who were before 12 courts in 1945 for appointment or discharge by type of surety and type of guardianship

Bond and type of surety	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
APPOINTMENTS								
Total	2,957	100	675	100	1,507	100	775	100
Bond required	2,603	88	610	90	1,269	84	724	93
Corporate bond filed	1,274	43	0	.....	632	42	642	83
Personal bond filed	799	27	95	14	631	42	73	9
No bond filed	530	18	515	76	6	[1]	9	1
Bond not required	354	12	65	10	238	16	51	7
Substitute for bond filed [2]	179	6	0	.....	167	11	12	2
DISCHARGES								
Total	850	100	25	100	560	100	265	100
Bond required	773	91	21	84	513	91	239	90
Corporate bond filed	475	56	0	.....	271	48	204	77
Personal bond filed	275	32	0	.....	240	43	35	13
No bond filed	23	3	21	84	2	[1]	0	.....
Bond not required	77	9	4	16	47	9	26	10
Substitute for bond filed [2]	24	3	0	.....	18	3	6	2

[1] Less than 0.5 percent.

[2] Includes extracts of inventory and descriptions of property which are authorized substitutes for bond in Louisiana.

Sureties are supposed to submit a notarized affidavit listing and describing the property put up to secure the bond. Few records were found to contain such affidavits. Proof of ownership is not generally required from sureties, nor is there any systematic check made of the adequacy of the collateral.

It is apparent from table 19 that bond was given by practically all guardians of estate from whom it was required. It is interesting to note that when the guardianship involved both the person and the estate, corporate surety was most heavily used. This is probably explained by the fact that this type of guardian was most often a nonparent person and it is common practice among lawyers and judges to suggest corporate surety from these guardians.

The large extent of noncompliance with the requirement of bond in guardianships of person probably reflects the court's difficulty in seeing any protective values in placing the guardian of person under a $10 or $100 liability.

Oath

In California, Florida, and Louisiana, the guardian, after posting bond, must signify his acceptance of the trust of guardianship by taking an oath to observe the statutes governing his office and to fulfill the obligations of his trust faithfully [*177*]. Oath is not required in Connecticut or Missouri either by law or by court practice. In Louisiana, the undertutor also must take an oath.

No court included in the study was found to have a definite procedure for instructing the guardian and ward in the requirements of their relation. At some courts the clerk who administers the oath may take the occasion to answer questions put to him. But ordinarily it is expected that the attorney will furnish any necessary interpretation and instructions.

Letters of guardianship

The final step in the appointment process is the issuance of letters of guardianship to certify the guardian's authority. The letters are signed by the judge and have the seal of the court affixed to them (see pages 103 and 104). It was noted at several courts that the letters on file did not specify clearly whether the guardianship applied to the child's person, estate, or both.

SUPERVISION OF THE GUARDIAN

It has been noted that the process of appointment is defined in law and carried into practice by the courts in terms of certain formal procedures designed to assure proper determination and recording of the guardianship status of the minor. For the protection of the child, chief reliance is placed on the principle of kinship in selecting the guardian and on the device of bond and surety for holding the guardian to his responsibility. Social standards and social-study procedures are conspicuously lacking.

The process of supervision likewise lacks social implementation. As an officer of the court appointing him, the guardian is presumed to be subject to instructions, directions, and supervision from the court at all times. Yet

the only means furnished by law and employed by the courts for this purpose are appropriate for the most part to estate guardianship only.

As in appointment, so in supervision, the courts lean heavily upon the guardian's attorney. For, as has been seen, the courts generally lack adequate and qualified staff to provide continuing supervisory service. Instances of courts turning to State or local social agencies for assistance in supervising children under guardianship were the rare exception rather than the general rule.

Guardian of person

Although the law provides a framework for supervising the guardian of person, regular procedures have not been devised for this purpose at any of the courts visited. None of the courts of study maintains supervisory contact with guardians of person or in any way requires them to account for their stewardship. To all practical intents and purposes the guardian of person is left to his own devices.

Complaints serve as the court's chief source of information concerning the functioning of the guardian of person. But these are usually made at a point where the inadequacy of the guardian has become so patently serious as to necessitate formal petition for his removal. Court procedures in these situations will be discussed later.

Where the complaints are made informally, most courts refer them to the attorney to evaluate and to decide on the need to initiate formal court action. It will be seen in the next chapter that a number of courts have begun to use social agencies to investigate complaints.

Guardian of estate

In contrast to the almost complete absence of procedure for supervising guardians of person, there are definite supervisory requirements imposed by law upon guardians of estate. These may include the requirements of inventory, appraisement, and periodical accounting. Additionally the courts are generally empowered to exercise various controls and checks upon the guardian's handling of the estate, especially in such matters as investments, sales, and expenditures.

These provisions are used by individual courts under varying policies and with varying degrees of effectiveness. By and large, the courts tend to be passive, allowing guardians to comply or not to comply with legal requirements according to their individual inclination. However, the courts generally consider noncompliance with legal requirements as presumptive of

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

Case No. 83965

In the Matter of the Estate and Guardianship of

Jane Marie Donovan

Filed

J. F. MORONEY, County Clerk,

By , Deputy

LETTERS OF GUARDIANSHIP

STATE OF CALIFORNIA, County of Los Angeles } ss.

Mrs. Roberta McCabe is hereby appointed Guardian of the person and estate of Jane Marie Donovan, a minor

Witness, J. F. MORONEY, Clerk of the Superior Court of the County of Los Angeles, with the seal thereof affixed, this 3rd day of April 19 45.

By order of the Court.

J. F. MORONEY, County Clerk,
by R. J. Curtis, Deputy.

STATE OF CALIFORNIA, County of Los Angeles } ss.

I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully perform, according to the law, the duties of my office as Guardian of the person and estate of Jane Marie Donovan, a minor

Subscribed and sworn to before me,

this 3rd day of April 19 45

Peter K. Johnson
Notary Public in and for the County of Los Angeles, State of California

J. F. MORONEY, County Clerk,
by R. J. Curtis, Deputy.

STATE OF CALIFORNIA, }
County of Los Angeles } ss.

I, J. F. MORONEY, County Clerk and ex-officio Clerk of the Superior Court within and for the county and State aforesaid, do hereby certify the foregoing to be a full, true and correct copy of the original Letters of Guardianship granted herein, as the same appears on file in my office, and I further certify that said Letters have not been revoked and are in full force and effect at the present time.

In witness whereof I hereby have set my hand and affixed the seal of the Superior Court this 3rd day of April, 19 45

J. F. MORONEY, County Clerk,

by R. J. Curtis, Deputy.

maladministration of the estate, in the event of a complaint. Some courts emphasize certain legal requirements above others, and a number of courts have substituted their own procedures for those required by law.

Inventory and appraisement.—The inventory is the official record of the property belonging to the child which is entrusted to the management of the guardian. It is therefore necessary and important that it should contain a full and accurate listing and valuation of each item of estate. Moreover, inasmuch as the inventory is the basis for examining periodical accounts and planning support allowances and other expenditures, it should be verified and appraised to guard against possible errors of fact.

Usually the inventory is prepared on forms furnished by the courts. These set off real property from personal property and allow space for noting estimated values. The inventory must be notarized.

The statutes require the guardian to file the inventory within 30 days after appointment in Michigan, within 2 months in Connecticut, within 3 months in California, and within the next term following the appointment in Missouri, which may mean a period of 6 months in some cases. The Florida law was changed in 1945 to allow 60 days instead of 30 days. It will be recalled that in Louisiana the inventory and appraisement are required prior to appointment. [*178*]

As the tabulation in table 20 shows, the legal requirements of filing inventories are honored chiefly in the breach. Inventories were not filed or were filed tardily in the great majority of cases. It is especially significant that more than a third of the guardianships terminated in 1945 lacked inventories.

Two States, Florida and California, require the filing of additional inventories to account for assets subsequently discovered or acquired [*179*]. One Connecticut court as a matter of policy requires additional inventories when estates have been increased by $100 or more. All the other courts expect additions to the estate to be reported in the periodic accounts.

Five States provide for the appraisal of inventories—Louisiana, as already noted, California, Florida, Michigan, and Missouri. [*180*]

One of the Michigan courts allows the guardian to select the appraiser, subject to court approval. A California court employs an appraiser who is paid a flat fee of $5 an inventory. A Missouri court uses three appraisers on each inventory. They are selected by rotation from a list maintained by the court. Each appraiser is allowed a fee of $3, as a rule, but may receive larger fees when the estate is large.

While appraisals are most commonly confined to estates containing real property, one court was found ordering appraisals of estates consisting solely of benefit payments even where the estate was placed under public guardianship.

Table 20.—Filing of Inventories of estates of minors who were before 12 courts in 1945 for appointment or discharge of guardians

Filing of inventories in relation to due dates	Appointments		Discharges	
	Number	Percent	Number	Percent
Total	2,282	100	825	100
Inventory filed	1,084	48	522	63
By due date	764	34	314	38
Past due date	320	14	208	25
Inventory not filed	1,198	52	303	37

A Missouri court has printed specific instructions for appraisement. These include the requirements that each item of real estate must be described by legal description, street number, and value; stocks must be listed by exact name, number of shares, certificate numbers, whether common or preferred, and issue and par value; bond listings must show the name of the obligor, number of bonds, kind of bond, date of maturity, interest rate, interest-due dates, and denomination.

It appears to be the exceptional court that subjects the inventory to examination for possible omissions or inaccuracies. As has been noted earlier, inventories are frequently incomplete or incorrect.

Despite the penalties specified in law for failure to file the inventory or for falsifying one, there were no instances of actions against defaulting guardians during 1945 at any court of study.

Controls over management.—In view of the smallness of children's estates, the problems of management are less likely to be concerned with questions of preserving the estate or making it more productive than with questions of applying it wisely to meet the current expenses of the child. Working out solutions for the latter problems demands an intimate knowledge of the child's personal situation which the courts recognize by their preferment of close relatives as guardians of minors' estates.

Not infrequently, however, the management of a child's estate also requires ability to estimate the child's needs in the form of allowance requests and the ability to plan specific disbursements for maintenance, education, and other purposes. Few courts are prepared to give assistance to guardians who may have trouble with these matters.

By and large, the powers and duties of the guardian of a child's estate are defined in statutes in conventional fiduciary terms: He may receive and take possession of the property, compromise claims against it, pay off debts, collect amounts due, make transfers, leases, mortgages, sales, exchanges, partitions, conversions, loans, investments, disbursements, and so forth.

In these matters he is expected to obtain court authorization and approval and to exercise ordinary care and prudence. He is especially required to keep the child's property separate from his own and to use it only for the benefit of the child.

Personal property.—The statutes generally allow the guardian more freedom and discretion in handling personal property than real property [*181*]. Personal property may be kept in the original securities or may be reinvested or converted into bank deposits.

The making of investments is controlled in Louisiana and Florida by statutory listing of legal investments [*182*]. In the other States court policy is determining. Most courts expect the guardian to select "proper and prudent" securities but leave the selection to his personal judgment. A number of courts prohibit or limit certain kinds of investments. Thus, at one court investment in certain municipal bonds is not permitted. At another, real-estate investments are not permitted. One court limits investments to a period of 5 years. Several courts require estates that are likely to be consumed in support of the ward to be deposited in savings accounts.

Since the guardians are usually selected for reasons of kinship rather than business ability, it is perhaps not surprising that the question of investment may be resolved in ways such as that of the guardian who kept an estate of $4,000 in a non-interest-bearing checking account.

> The guardian stated that she tried to open a savings account, but the bank would not accept such a large deposit. It worried her that the money was not producing interest, but neither the lawyer nor the court offered any alternative suggestions.

Real Estate.—Real estate is the most carefully protected item of property under guardianship. Procedures for real-estate transactions are detailed in law and generally are strictly observed by the courts.

For example, in the sale of real estate the court requires the guardian to give advance notice of his intention to sell, either in writing or by public notice. The court then may order an appraisal and decide whether the sale should be public or private. If the sale is to be public, the court requires public advertisement of the sale and a public hearing. At the hearing, the proposed terms of sale must be presented to the judge in advance for approval. The guardian may be required to furnish a special bond in the amount of the proceeds of the sale, and the court may appoint a guardian *ad litem* further to protect the minor's interest. After the hearing, the guardian is required to make a return of the sale on a printed form furnished by the court. [*183*]

Expenditures.—The general policy of the courts in the study is to encourage guardians to conserve the principal of the estate wherever possible and to use only income for current expense purposes. If principal must be used, personal property will be drawn upon before real property.

The courts have varying policies for allowing expenditures. One court allows the guardian complete discretion in the use of income. Another court allows "reasonable" expenditures to be made without advance authorization or approval.

Still another court makes a distinction between what it terms ordinary expenses and unusual expenses, allowing the guardian complete freedom with respect to the former but requiring the latter to be submitted for advance approval. An example of the latter would be the purchase of an automobile.

A number of courts assume that income from benefit or trust funds will be used entirely for the support of the ward, and consequently give the guardian complete discretion over the spending of these funds.

Expenditures are most commonly allowed in the form of allowances. A Missouri court allows the guardian of a small estate to withdraw the entire amount at one time. While the assumption is that the guardian will hold and use the money entirely for the benefit of the child, no assurance is asked by the court or given by the guardian.

Ordinarily the courts expect parents who become guardians of estate to continue supporting the child. But no attempt is made to find out if the parents who claim inability are really unable to support. A Connecticut court grants parents a flat allowance of $5 to $7 a week from the child's estate if the family's earnings are reported to be in low-income brackets.

Allowances may be planned for fixed periods of varying length, such as weeks, months, or quarters. The guardian may withdraw the authorized allowance in lump sums or in partial amounts to meet his own convenience. Budgetary procedure is not used at any court to relate requests for allowances to the real needs of the child. Only two courts appeared to make a systematic scrutiny of allowance petitions.

The regular allowance may include any "normal" or "reasonable" expense. It generally covers essentials of board, lodging, and schooling. Other items will be allowed on a supplementary basis. These may include music lessons, college expenses, emergency medical or hospital care, and special equipment or clothing.

The petition for an allowance is supposed to state the purpose and present a plan of expenditures, but this was done in a most sketchy way in the petitions examined.

Ordinarily the court grants the full allowance requested, but there were instances found where requests were denied or changed by the courts. In one instance, the court disallowed the use of the child's funds to pay off obligations of the parents. In another instance, the court disallowed a request for $250 for first-year college tuition, but stated it would entertain such a request for later school years if the parents find they can no longer carry this expense.

Where an expenditure has been made without authorization, the courts are generally inclined to approve it unless it is discovered to be extremely improper. One court requires supporting evidence of the necessity of an unauthorized expenditure. If the evidence submitted is considered unsatisfactory, the guardian may be required to make restitution or may be removed and a successor guardian appointed who will be instructed to sue his predecessor or the latter's surety. Generally, however, the courts seem reluctant to take action against guardians, especially if they are the parents.

A child was awarded $1000 in settlement of a claim for injuries sustained in an accident. The mother was appointed guardian of estate. She petitioned for termination of the guardianship the same day of appointment on grounds that the estate had been exhausted. The accounting showed attorney fees of a third of the estate; reimbursement to the father for loss of wages, $47.50; convalescent and travel expenses of the child, $184; and two charges by the mother, one of $150 for nursing the minor during convalescence and another, of $100, for school books, clothing, and incidentals expended on the child. None of the outlays had been authorized yet there were no challenges and the guardianship was terminated.

In another case involving a mother acting as guardian of estate, the court had authorized a withdrawal of $200 to pay accumulated hospital bills of the child. Months later the hospital petitioned the court to remove the guardian for failure to pay the bills, which were found to amount to $110. The court wrote the guardian for an explanation. Not receiving one, it cited her for removal. The guardian failed to appear for the hearing. The court wrote her again that the bills must be paid at a set date under penalty of immediate removal. When it was brought to the attention of the court that the guardian had not complied, the court took no further action with reference to the guardianship, but authorized an additional withdrawal from the child's estate to cover the hospital bills.

Periodic accounting.—Periodical accounts provide regular opportunities for the court to review with the guardian the financial condition of the estate, and to check the wisdom of investments, the propriety of expenditures, and the sufficiency of bond and surety. They also furnish a basis for giving consultation and advice concerning immediate management problems and future plans.

In some States there are definite advantages for the guardian in filing accounts. If the accounts are accepted by the court, they serve as evidence of satisfactory administration for the period covered. The guardian may not thereafter be subject to collateral attack, but in the event of such attack the burden of proof falls on the attacking party.

State laws provide the framework for accounting, including provisions for filing the account, serving notices of its receipt, and holding hearings thereon. But most courts make only perfunctory use of these provisions.

In all the States except California, the courts charge fees for handling accounts.

Annual accounts are required by law in all the States in the study [*184*]. Connecticut, however, exempts entirely from the accounting requirement estates worth less than $2,000. This exemption rules out practically four out of five guardianships of minors. The accounts must be submitted under oath in all States.

A number of courts furnish standard forms for the purpose, which provide for the listing of receipts and disbursements and show how the principal is invested. There are no questions listed regarding the health, education, or social welfare of the child, even when the guardianship extends over the child's person as well as the estate.

Several courts have established procedures at variance with statutory requirements. One court has made the filing of accounts entirely discretionary with the guardian.

Two other courts have introduced varying intervals for filing, related to the size and activity of the estate.

At one, the larger and more active estates must be accounted for at 3-year intervals and the smaller and less active estates at 5-year intervals. At the other, intervals of 2 to 5 years are set for certain types of estates, while for small estates accounting is dispensed with entirely, as too expensive.

Table 21.—Filing of Accounts by guardians of estates of minors who were before 12 courts in 1945 for discharge of the guardian

Filing of accounts in relation to legal requirement	Discharges	
	Number	Percent
Total	825	100
Accounts filed regularly as required	185	22
Accounts filed irregularly, less often than required	494	60
Accounts never filed:		
Total	146	18
Over period of 2 years	79	10
Over period of 2 to 4 years	28	3
Over period of 5 to 9 years	22	3
Over period of 10 or more years	17	2

It is apparent from table 21 that in large proportions of cases accounts are not filed or are filed less frequently than called for. Banks, public guardians, and guardians supervised by the Veterans Administration generally are most regular about filing accounts.

The irregularity of filing is illustrated by a guardianship involving a $4,000 estate. The first account was filed 3 years after appointment of the guardian, the second 2 years later, and no subsequent account was filed during the next 9 years that the guardianship was in force.

A number of courts have instituted reminder-letter systems in an effort to bring down the proportion of irregular filings and nonfilings.

When an account is submitted to the court, it is supposed to be checked and audited. However, most courts lack staff for more than a casual examination of accounts. At some courts, only accounts involving large estates receive attention.

Several courts expressed need for special investigators who could be assigned to reviewing guardianships from the standpoint of fulfilling legal requirements concerning adequate bonding, inventorying, accounting, and settlement.

Ordinarily, hearings on accounts are held only on complaints or discovery of gross discrepancies. One court of study in California holds open-court hearings on accounts. At the Los Angeles County court, the special commissioner usually goes over the account with the guardian's attorney either preliminary to a hearing or in lieu of the hearing. This review may include comparisons with previous accounts, the inventory, bond, and court orders issued during the period of the account. It is for the most part bookkeeping in nature and does not attempt any appraisals. Occasionally vouchers and other supporting documents may be requested when discrepancies are noted. The hearing itself is routine, with little attempt made to evaluate the success of the guardian or to discuss with him future plans for the child's care and development.

A Louisiana court occasionally advertises the filing of an account to offer opportunities for objections. This procedure is used only when requested by the guardian, who may desire it for his own protection. The cost is charged against the estate.

One Missouri court of study follows a more exacting procedure in accounting than in any other aspect of guardianship administration. This court lists the due date of accounts on dockets which are printed and mailed out long in advance. A copy is sent to the lawyer representing the guardian or if there is no lawyer to the guardian himself.

At the time indicated, the attorney or guardian must bring to court a completed account and must pay the court costs for the year. The account will then be routed to one of three auditors on the court staff, who checks its completeness and accuracy against the record of authorizations of expenditures, investments, and other transactions. Unauthorized expenditures must be supported by proper receipts. The auditor next computes the deductions to be made for the guardian's compensation and expenses.

Upon completing this check, the auditor prepares a form entitled "Auditor's Report," which is attached to the account. It notes for the attention of the clerk any items not properly accounted for. Both the account and the auditor's report then go to the clerk of the court to take up any indicated corrections with the attorney or guardian. After these adjustments the

account is checked against previous accounts and the inventory.

If the account is not filed at the due date, the accounting is moved forward to the next term of court and an additional fee will be charged then. Continued failure to file may result in a citation with a possible fine and revocation of the guardianship. Disciplinary action of this character is extremely rare, however, at this and at practically all other courts visited.

DISCHARGE OF THE GUARDIAN

The period of legal guardianship extends to the child's majority, unless terminated earlier by resignation or by revocation for certain failures or causes enumerated in the statutes [*185*].

Termination is supposed to be a formal court procedure. It is made so in guardianships of person only in cases of resignation or removal. Otherwise, guardianships of person come to an end automatically upon majority, adoption, marriage, or emancipation of the minor, or upon action of juvenile courts.

The termination of guardianship of estate is, on the other hand, made a formal proceeding on the basis of various causes. The particular causes listed in statutes include: The child's change of residence to another jurisdiction, his death, or the death of the guardian; the guardian's failure to comply with legal requirements for bonding, inventorying, or accounting, or his failure to comply with court orders; the guardian's incapacity to execute his trust, neglect of his duties, wasting of the estate, or personal misconduct;

Table 22.—Formal Termination of Guardianship by 12 courts in 1945 by duration and type of guardianship

Guardianships terminated by years of duration	Discharges							
	Total		Person		Estate		Both	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	850	100	25	100	563	100	262	100
Under 1 year	83	10	4	16	68	12	11	4
1 to 4 years	359	42	16	64	243	43	100	38
5 to 9 years	234	28	5	20	149	27	80	31
10 to 14 years	111	13	0	0	68	12	43	16
15 years or more	63	7	0	0	35	6	28	11

or the exhaustion of the estate. However, the last-mentioned reason will not technically terminate the guardianship until the ward has reached majority. [*186*]

Duration of guardianship

Table 22 shows how many guardianships were terminated formally during 1945 in relation to the number of years that they lasted. It will be noted that guardianships of person only bulk very small among terminations and last a relatively shorter period than those involving estates.

Petition for discharge

In all six States included in the study the termination proceeding may be started by the court on its own motion. This occurs rarely, however. In consequence, it was found that in nearly a third of the cases handled by the courts in 1945 the termination had been delayed for periods of a year to upwards of 5 years after the child had reached majority.

Petitions for terminating the guardianship were filed for numerous reasons, as shown in table 23. The principal reasons shown are that the child came of legal age and that the estate was exhausted. Excluding cases in which these were the reasons, as well as others in which guardianship was terminated because of the death, marriage, or emancipation of the minor, there

Table 23.—Reasons for Terminating Guardianship of minors presented in petitions filed with 12 courts in 1945

Reason for terminating guardianship	Discharges	
	Number	Percent
Total	850	
Total reported	841	100
Majority	495	59
Exhaustion of estate	158	19
Marriage of minor	33	4
Death of minor	14	2
Death of guardian	12	1
Resignation of guardian	69	8
Removal of guardian	22	3
Emancipation of minor	9	1
Minor's request for change	2	(1)
Other	27	3
Total not reported	9	

[1] Less than 0.5 percent

appears to be a considerable group for whom a guardian might still have been needed. Yet successor guardians appear to have been appointed for only 43 children.

It is particularly interesting that removal proceedings were deemed necessary in only 3 percent of the cases. Removals involved a variety of situations. For example, in one case the court removed the guardian on its own initiative because it became apparent that he was too old and ill to attend to his duties adequately. In another, the minor petitioned for removal of the guardian on grounds that he misinformed him concerning his right of nomination by advising him that he could not name his adult brother, whom he preferred. In a third case, involving three children, the guardian claimed a deficit in the annual account which he could not substantiate.

When application is made for the removal of a guardian of person in Connecticut, the courts may request the cooperation of licensed social agencies in studying the situation and in making arrangements for the care of the child pending determination of the case by the court.

Method of discharge

The discharge proceeding is supposed to provide an occasion for a review of the guardianship. It has been described as—

> "the real adjudication of the guardianship. It is the proper time for the recovery of loss while jurisdiction is still in the court. After the discharge of a guardian more expensive litigation would be necessary. At this time the burden of proof of good faith and honest management is on the guardian. After he and his sureties are released, the burden of proving bad faith is on the ward." [*21*, p. 137]

To secure his legal discharge, the guardian is required to make a final accounting and settlement. Statutes state that the account must be a "full and final" statement descriptive of the condition of the estate. It must be filed with the court, and a copy must be served on the ward or successor guardian. [*187*] As table 22 shows, final accounts were not filed in nearly a fourth of the cases.

Hearings are supposed to be held on the final account, but this is generally the case only in California. In the other States of study, hearings will be held when objections are raised about the account or when the estate involved is large. Occasionally a hearing is held at the request of the guardian who wishes to protect himself against collateral attack. Final accounts that come to a hearing are usually audited in advance.

In California the hearing is held in open court. The guardian or successor guardian, the ward, and the attorney appear. Except in contentious

cases, the judge will satisfy himself concerning the account merely by asking a few routine questions of those present.

The settlement between the guardian and the ward is supposed to be based on the accounting. It is usually made out of court without court supervision. Although private settlements seem inconsistent with the obligations of the court to guarantee a proper settlement, there is statutory requirement for court participation only in California [*188*].

The court is advised of the settlement by the minor, who files a statement under signature, which states that he has received a full and satisfactory settlement from the guardian and wishes him released from bond. The minor's receipt does not particularize as to the nature of the settlement. It will be seen in table 24 that minors filed releases in somewhat more than half the discharge cases in 1945.

Table 24.—Methods of Discharging Guardians of minors employed at 12 courts in 1945

Method of terminating guardianship	Discharges	
	Number	Percent
Total	850	100
Final account, minor's release and discharge order	312	37
Final account and minor's release only	12	1
Final account only	23	3
Final account and discharge order only	303	36
Minor's release and discharge order only	62	7
Minor's release only	79	9
Discharge order only	59	7

On the basis of the release, the court relieves the guardian of bond and issues an order of discharge. This step was taken in all but 13 percent of the cases in 1945 (table 24).

It is of interest to note that all three steps involved in the formal discharge of guardians were taken in only a little more than a third of the guardianships terminated in 1945.

Time involved

Table 25 shows the time required for completing the discharge proceeding. The most important time factor is the hearing. In California, where hearings are held as a rule, nearly 95 percent of the discharges required 15 days or longer to complete.

Table 25.—How Long It Takes to Discharge Guardians: Time interval elapsing between date of filing of discharge petition and date of order of discharge in guardianships terminated by 12 courts in 1945

Interval between petition and order of discharge	Discharges	
	Number	Percent
Total	850	100
Same day	276	32
1 to 7 days	48	6
8 to 14 days	29	3
15 days or more	497	59

APPEALS

There is provision for appealing guardianship appointments, judgments, and decrees in all the States studied. In States where guardianship jurisdiction rests with a court of inferior status, the appeal must be taken to the next higher court, which is usually a court of general jurisdiction, such as a circuit court.

In two States in which guardianship jurisdiction is lodged in courts of general jurisdiction, Louisiana and California, there are special courts of appeal. In the former State, only cases involving estates of more than $2,000 may be appealed directly to the State supreme court, while in the latter all cases may be so appealed.

Any person considering himself aggrieved by the appointment or by any order of the court may take an appeal. Usually the appeal must be commenced within a month of the court's action. In Connecticut a year is allowed for appeal by parties who had not received legal notice of the hearing at which the appointment was made by the court.

Only 2 of the 12 courts in the study were involved in appeals during the year. One case was appealed from each court. One case centered in a conflict between the mother's relatives and the stepfather, over guardianship of a child's estate.

> After the mother's death, the stepfather transferred to the child the balance in his joint bank account with the mother. The court appointed him guardian of these funds upon the child's nomination.
>
> Subsequently the mother's relatives in another State took the child to live with them. In a short time the minor petitioned the court to transfer her estate and revoke the stepfather's appointment. Believing that the relatives had

influenced the child, the court denied the petition. An appeal is pending before the State supreme court.

The other case appealed during 1945 has already been described on page 66. It involved a question of jurisdiction between the divorce court and the guardianship court and was decided in favor of the court having divorce jurisdiction.

7. The Use of Social Services

The court process in guardianship involves administrative as well as judicial functions. By law, every State in the study places both functions in the court. While this is contrary to the principle of the separation of powers underlying our system of government, it is in the familiar pattern of juvenile-court law and stems from the same historical lag in the development of community resources which caused juvenile courts to set up their own administrative services. [*190*]

It was significant to find, however, that the courts appointing guardians of children varied considerably from juvenile courts in the extent to which they have implemented their administrative responsibilities by providing and utilizing social services.

Yet a social approach to guardianship is clearly indicated by the policy declared in law that the welfare of the child shall be the controlling consideration in deciding his guardianship. To act in the best interests of the child, courts need to know his particular situation and the ability and fitness of the prospective guardian to meet his particular need. Court experience with adoption, custody, and commitment cases, has demonstrated that this type of information can best be supplied the court through the methods of social casework.

SOCIAL SERVICES AVAILABLE WITHIN THE COURT

Several courts studied have begun to use social services available within the court structure and the community at large, in connection with guardianship cases. Instances were few, however. In general, the approach was exploratory.

Probation officers

In Michigan, both courts included in the study made use of the probation staff attached to the juvenile division of the court. One court referred only certain selected cases, while the other referred all applications for guardian-

ship of person and those for guardianship of estate that did not carry the written approval of living parents.

At the second court 2 weeks were usually allowed for the investigation. Written reports were expected in the form of brief memoranda. The reports seen contained an evaluation of the fitness of the proposed guardian and the suitability of the guardianship plan, together with recommendations. In some cases the worker gave oral testimony at the hearing as an alternative to filing a written report.

In one case, the investigation made a definite contribution towards resolving conflicts and potential sources of difficulty.

> Marie, aged 2, and James, aged 15, lost both parents by death within a month's time in 1945. The aunt who took the children applied for guardianship of both person and estate. Other relatives objected and hired a lawyer to file a counterpetition.
>
> The judge ordered an investigation as a means of getting at the facts in the controversy between the relatives. The report of the investigation covered a single typed page. It revealed the financial stability of the aunt's home and gave a picture of the emotional security which the children were receiving there.
>
> On the basis of this report the judge arranged a hearing to bring the relatives together to talk over their differences. It resulted in general agreement that the aunt had most to give the children and should therefore be appointed guardian of their person. It was further agreed that the aunt lacked the experience to handle the estates, which were entrusted to a bank.

County welfare agents

Both Michigan courts also made use of the county agent who is attached to the court. The county agent has a rather anomalous position in the State welfare set-up. Though paid with State funds, he is not subject to State supervision. He is appointed by the local judge of probate, subject to the approval of the Governor. Under statutory definition, his functions are so vague that it is really up to him and the judge to determine them. Social-work qualifications are not specified for the position.

The two courts visited used the county agent in various ways. One court had him investigate petitions. The other court consulted him on cases which appeared to present social problems. This court also sometimes appointed him guardian. It was indicated that in other counties of the State, where the county agent works on a per-diem rather than straight-salary basis, the court frequently appoints him guardian of estate, as a means of augmenting his income.

A special visit was made to the office of the county agent in Wayne County (Detroit), Michigan, as this office was reported to provide regular service to the local court in guardianship cases. This office includes a staff of pro-

fessionally trained social workers who devote full time to court cases. Those receiving service included only about 10 or 15 guardianship petitions out of a total of approximately 1500 that were filed with the court during the year. The agent explained that the acute shortage of staff does not allow the handling of more cases, although the office is convinced that guardianship needs to be safeguarded as carefully as adoption.

Referrals are usually made by one of the four judges who sit in guardianship cases. This judge has been interested in social investigations for many years. He usually refers petitions on which complaints or counterpetitions have been filed. The referral is made formally by letter. It presents the essential identifying information, states the points of special interest to the judge, and lists the persons to be contacted. Frequently the letter runs to several pages of summary of the situation.

The investigation is ordinarily made through home visits and interviews with interested relatives, correspondence with agencies knowing the child in other communities, verification of police and institutional records, and summary of local-agency records registered with the social-service exchange.

Ordinarily 2 weeks are allowed by the court. A written report including recommendations must then be submitted. The county agent or an assistant caseworker usually attends the hearing and may be called upon to testify.

Examination of a sample of 20 reports, pulled from file at random, illustrates the kinds of situations brought to the attention of the judge by the investigation. It was interesting to find that follow-up visits were made in a number of cases, and several cases involved rather long-time contacts in which the agent provided counseling and planning services.

> The mother had died recently. The child was in custody of the grandmother, but the father wanted to have her with him. The grandmother petitioned to have the father removed as natural guardian. The report stated that the consensus of friends and relatives was that the father was interested in the child but inadequate to give her care. Furthermore, the child wished to remain with the grandmother. The agent recommended that the minor should be permitted to remain with the grandmother until of age to decide for herself but that the father should be allowed to visit.

> A grandmother petitioned for guardianship of a 15-year-old minor who had been shifted constantly from one relative to another throughout his life. The parents were divorced. The father, mother, and grandmother all wanted the boy, who was anxious to stay in one place in order to finish high school. It was recommended that guardianship should remain with the mother since she was moving to a part of town where it would be convenient for the boy to continue attending the high school where he was enrolled. Later in the year the grandmother complained that the mother had left the boy and that he was wandering about aimlessly. A reinvestigation revealed the boy had moved in with the father and was attending school regularly. Both the father and the boy were satisfied with their arrangement. It was therefore recommended that it would be inadvisable to reopen the question of guardianship at the present time.

A mother petitioned to remove a grandmother as guardian on grounds of unfitness. The grandmother had been appointed guardian 2 years before when the mother was still a minor. It was recommended that guardianship by the grandmother be continued because she offered the child a more stable home than the mother.

An aunt petitioned for guardianship of an 18-year-old girl. The grandmother objected. Investigation revealed that the girl had been bounced around all her life. There were some episodes of shoplifting. The girl appeared confused about what she wanted. There were intensive interviews with the girl and a good description of her emotional problems. It was recommended that the aunt be appointed guardian. Later, the girl left the aunt and then moved from one relative to another, all the time maintaining contact with the county agent. Nearly 3 years after the original contact, the record showed, the girl had visited the office to tell about her marriage. The contact with the county agent had apparently represented one stable factor in a very confused situation.

A father died, leaving an estate to the mother and minor, both of whom were mentally incompetent. The father's will designated a member of his union to administer both estates. This person offered to serve also as guardian of person for the minor. Appointment was made on condition that he work out all plans for the care and supervision of the child with the county agent.

Adoptive parents requested appointment as joint guardians of estate of their adopted child. There was a complaint that they were alcoholic and neglectful of the child. Investigation confirmed this. As a result, a lawyer was appointed guardian of estate. The county agent continued to serve the child with advice and counsel, and after the child had found her natural father, made a study of the father's home and recommended her placement there.

A minor, aged 16, requested appointment of a friend as his guardian. He charged that his mother was living out of wedlock. He resented giving her his earnings. The father was in a State mental hospital. Investigation revealed that the boy still loved his mother but needed a man to talk problems over with. It was recommended that the mother remain the guardian but that the agent be authorized to arrange for the boy to talk with the chaplain assigned to the court.

Complaint was made that a petitioner for guardianship of a young girl's estate was planning to divert the estate to his own use. The investigation tended to confirm this and caused the court to dismiss the petition.

Court social worker

An instance of a court employing a full-time social worker to assist with guardianship cases came to light in Missouri. The worker was employed by the probate court of the city of St. Louis from 1938 through 1944. The arrangement was made on the initiative of the judge who had become

familiar with the functioning of social workers in the juvenile court. It was his thought that the social worker could help him with cases of minors and adult incompetents that presented social problems. However, a specific job description was not formulated. The social worker was given the title of deputy clerk.

Requests for her services came from both the judge and the clerk of the court. Examination of a sample of 116 records on child guardianships[2] indicated that most of the requests related to financial problems. Thus, 46 concerned budgeting and disbursing problems involving the determination of proper support allowances and expenditures, and 19 related to problems raised by annual accounts. On the other hand, there were only 11 referrals for investigation of petitions for the appointment of guardians, and 12 referrals for investigation of complaints regarding the guardian's activities. A group of 20 referrals specified miscellaneous reasons, while 8 specified no reason.

It was indicated that the service was discontinued when it became clear that the worker was being used primarily to make financial investigations rather than to provide social study and service.

SOCIAL SERVICES AVAILABLE TO THE COURT

As States and communities develop, strengthen, and extend child-welfare services, the courts will increasingly be able to turn to local social-service resources to assist them with guardianship problems. Two States included in the study have made statutory provision for bringing courts and community social agencies into working relations on guardianship cases.

Social investigation of appointment petitions

In California, legislation was enacted in 1941 authorizing the investigation of petitions for the appointment of guardians by county probation offices [*191*]. These offices are administratively independent of the courts.

The historical background of this program is interesting. In the early thirties that pioneer in the development of individual social treatment of juvenile offenders, Judge Ben Lindsay, experimented informally with the use of social investigation in guardianship cases. As conviction about the

[2] These records were in the possession of the social worker to whom the court had released them because it did not think it could protect their confidential nature properly.

merit of this plan grew, welfare leaders in the State organized a campaign to legalize the procedure throughout the State. The culmination was the enactment of the present law which permits but does not require the courts to request investigations.

Information on the operation of this program throughout the State is unavailable except for the suggestive statistics compiled by the Welfare Council of Metropolitan Los Angeles from correspondence with individual county clerks and probation officers. These statistics cover the 3-year period, 1943 to 1945. They do not indicate any upward trend in the use of this service, but, on the contrary, show that only a few counties were using the law, and in these the volume of petitions investigated constituted an exceedingly small proportion of the total petitions filed with the court.

Los Angeles County showed the most investigations. In 1943, 380 investigations were made; in 1944, 25; and in 1945, 30. The sharp drop after the first year was attributed to a change in referral procedure, whereby the judges rather than the clerk determined referrals. Each judge apparently makes the determination on an individual case basis. One judge will ordinarily refer cases involving the termination of parental rights for reasons of alleged unfitness. Another judge usually refers contested cases.

The procedure for referral has been formalized. A referral form is used which identifies the parties concerned, states the reason for the referral, and notes when a report is expected. It is filled out by the clerk on request of the referring judge .

The probation office accepts all referrals. No effort is made to encourage greater or more varied use of the services of the office as it is believed that the judges' own experience will in time result in a more frequent and planful use of the service.

Usually a month is allowed for the investigation and report, but the time may be extended in consultation with the judge. Decisions on who is to be seen and the general conduct of the investigation are left to the probation office. As a general rule, an effort is made to interview the child, the proposed guardian, the petitioner, and any living parents. In contested cases, persons representing the opposing sides will be seen. The interviews are usually conducted by home visits.

The focus of the investigation is usually on four points: (1) The child's living conditions, social adjustment, and personal preference for guardian; (2) the proposed guardian's attitude towards the child and ability to take responsibility for him; (3) the general reputation of the proposed guardian and his acceptability to relatives and others interested in the child; and (4) the facts of the child's family history, such as births, marriages, deaths, employment, and health.

The findings are reported to the court in a topical statement which usually avoids evaluations and recommendations. Two copies of the report are pre-

pared. The original goes to the interested judge, and the carbon is retained in the office file. After the hearing, the judge may return his copy if he considers the information too confidential to be filed in the court case folder.

Follow-up study

Recently the Los Angeles County probation office has undertaken another type of service to the court in guardianship cases. This service is rendered in connection with the appointment of temporary guardians. It involves the making of follow-up studies of cases that have not been definitely disposed of by the court. Restudies are made before each continued hearing on the case. The Jones case illustrates this type of service.

Sally and Ted were the two children of the Jones marriage. The marriage had never been either secure or happy, and there were several separations before the divorce in 1943. Mr. Jones was an immature and irresponsible individual. Mrs. Jones was impulsive and seemed more adequate than her husband only in her greater capacity to understand and meet the needs of the children.

After the divorce, Sally went to live in the paternal grandparents' home and Ted remained with his father, who later remarried. This second marriage was short-lived, and in 1945 Mr. and Mrs. Jones reestablished a home with both children, although Mr. Jones had not yet secured a divorce. At this time, the paternal grandparents petitioned the court to appoint them guardians for Sally, claiming that she was neglected. They later amended the petition to include Ted.

The petition was referred for investigation. The investigation revealed the unfavorable marital history but suggested that the parents were apparently making a sincere attempt to care for the children. The court tabled action for 6 months to give the parents a chance with their plans.

A follow-up study was made preliminary to the second hearing. It indicated that the children were apparently making a good adjustment, but that the relations between the parents were becoming shaky. The court again continued the case, instructing the parents to attempt to place their relations on a more solid foundation.

By the time of the third hearing, however, study showed that the parents had once more separated. Sally was again living in the home of her grandparents and Ted was none too well cared for in his father's home. At this time the court decided to award guardianship of Sally to the grandparents and gave the mother temporary custody of Ted, postponing a definite decision regarding his guardianship until the next hearing.

The fourth hearing did not close the case, but was the last one to occur before this study. The follow-up study at this time indicated that Ted's adjustment had deteriorated. Everybody but his mother considered him unmanageable. The judge again continued the case, permitting Mrs. Jones to retain temporary custody of the boy. The judge's thinking at this time is reflected in his letter requesting another report at the next continued date. "I do not feel that under the facts set out in the present report I was justified in granting letters of guardianship to the mother, but the boy states he is anxious to make good and I put the matter over in the hope he would make some progress."

This procedure suggests several advantages. In a case where the judge is not convinced of the fitness of prospective guardians, he delays his decision to give them opportunity to prove their fitness. Follow-up study gives him a background of information against which to consider subsequent decisions. Further, it is possible that the court may exercise a constructive influence by remaining in the picture as an authoritative body putting the people on probation, as it were. However, it should be noted that casework service is not made available to promote the adjustment process. The probation office assumes responsibility only for reporting the changes that have occurred in the child's situation since the last contact.

Information reports

There are two other types of service which the probation office of Los Angeles county renders the local court in guardianship cases. These are performed on the office's own initiative. One is to report to the court any adverse information coming to its attention concerning the activities of court-appointed guardians. The other is to pass on to the court any information it has relating to cases pending before the court which involve the appointment of a guardian of a minor. An example of the latter type of service is the following.

> An orphaned girl, aged 10, was a ward of the juvenile court because of some behavior difficulties. After it became known that the girl had a substantial estate, a distant relative and a family friend vied for appointment as guardian of estate. The probation office had information that neither of these persons had any real interest in the child. It submitted a report to the court, which thereupon denied both applications and appointed a bank instead.

Social investigation of termination petitions

In Connecticut, statutory permission is given the probate courts to use the State welfare department or accredited social agencies to investigate petitions for the termination of guardianship rights of parents or legal guardians [*192*].

The State welfare department and several private social agencies reported handling a small number of such requests for the courts in 1945. These involved natural guardians in all instances. In most cases the court action was intended to facilitate adoption of the child by transferring the right to consent to adoption from natural parents to legal guardians.

Some cases, however, involved serious countercharges of parental unfitness, which appeared to be made for the purpose of placing one parent in a more favorable position than the other for winning custody of the child in

a contemplated divorce action. Several agencies questioned their involvement in situations of this kind where the child's welfare is not the real concern. In a recent case an agency's report was given sensational newspaper publicity.

Filing termination petitions

Under this same Connecticut statute, town selectmen may bring to the attention of the court any child whose interests demand the termination of parental or guardian rights. In the city of Hartford, the local welfare department performs this function of selectmen.

This agency has had occasion to petition the court in a number of instances where adoption was contemplated. It usually acted for the lawyer or social agency arranging the adoption.

The agency has some uneasiness about giving this service because time does not permit any social study of the situation, and the agency believes that the proceeding for terminating parental rights should have the same social safeguards and protection as the adoption proceeding.

Verification of parental status of minors

This Hartford agency cooperates more directly with the local probate court by verifying for it the parental status of minors who have represented themselves as full orphans for the purpose of having guardians appointed to consent to marriage, military service, or other plans requiring legal consent.

Consultation service

Though no agency was found to conduct a regular program of interpretation and consultation to courts with regard to the social aspects of guardianship, there were indications in a number of communities visited that the judges of probate would be interested in having this service from social agencies.

In some communities, local agencies were reluctant to take up guardianship matters with the court for fear of committing themselves to a service that they are not equipped to provide and that, in their view, is the proper responsibility of the State welfare department.

In Michigan, the State welfare department is accepting some responsibility in this field through its district consultants. It was indicated that the con-

sideration of guardianship problems has become an increasing part of the district consultant's work with probate judges.

Reporting the need for guardianship

It has been seen that social agencies sometime act as petitioners in guardianship cases involving children. Many agencies indicated an interest in taking a more active part in discovering and reporting children needing legal guardianship, but felt hampered by legal, administrative, and practical considerations.

One problem arises from the fact that the guardianship laws of all the States in the study are silent concerning the part that social agencies may play in guardianship matters. In no State does the law expressly grant social agencies the right of petition or the right to participate in the court proceeding.

Another stems from the lack of definiteness of the organic acts or charters of agencies. These frequently are not explicit on whether the agency may take children into court solely for the purpose of having legal guardianship determined and on whether the agency may provide service to the court in relation to the guardianship action. In point is the fact that only Florida of the six States of study expressly authorizes the State welfare department to concern itself with "children with improper guardianship" [*193*]. The implications of this provision for program development have not been acted upon, however.

Various statutory and administrative rules governing agency operations tend to further restrain agencies from taking an acting part in guardianship matters. These frequently limit the kinds of programs that may be undertaken, the types of situations that may be dealt with, and the groups of children that may be accepted for care or service. The effect of these limitations is currently evident in uneven and unequal provision of service to children in the States. [*194*]

A number of agencies indicated that even if legislation and administrative rules and regulations were more permissive, there still would be the practical problem of overcoming inadequacies in community resources and in individual agency budgets and staffs before there could be any considerable extension of service to children in relation to problems of legal guardianship.

8. The Cost

The cost of guardianship is considered a proper charge against the child's estate. If there is no estate, the cost is assessed against whoever asks or receives court service.

There are several common items of cost. These include not only the cost of filing the petition and the attendant legal fees but also the cost of posting bond.

There may be additional fees for the guardian and for guardians *ad litem* who serve in connection with special proceedings; also, expenses may be incurred in making appraisals, in publishing notices, and in connection with the guardian's performance of his duties.

COURT COSTS

All the courts in the study charge fees in guardianship cases. Five States expressly authorize the charging of fees by statute [*195*].

The fees are based on individual units of work at all but the California courts. That is to say, a charge is made for each filing, recording, order, copy, notice, hearing, or other form of activity or paper work required of the court. The amount charged for individual items varies from 3 cents to $5.

In California, a flat filing fee is charged which covers the ordinary cost of the court action. This fee is fixed at $7, but one court of study has added a dollar as a law-library tax and the other has added $3 as the court reporter's fee.

Many courts require an annual cash deposit of $5 to $10 to take care of the costs that accumulate during the year.

It is rare for courts to waive or reduce fees. Rather than do this, several courts have adopted the practice of terminating guardianships over estates that are too small to warrant court administration. Under California law, court fees are prohibited in cases involving public wards [*196*].

Records of court costs were not always available or complete at the courts studied. For the cases discharged during 1945, it was possible to obtain court costs covering the duration of the individual guardianships in only 447 of the 850 cases. Of the group for which information was obtained, 355,

or nearly four-fifths, showed cumulative charges by the courts in amounts of less than 2 percent of the original value of the estate. In the remaining cases, court costs whittled the estate by 2 to 4 percent in 40 cases, by 5 to 9 percent in 37 cases, and by 10 percent or more in 15 cases.

ATTORNEY FEES

The attorney's fee is usually left to the discretion of the court, but in some States in Veterans Administration cases the State law prescribes a maximum fee of $25. The Veterans Administration opposes fees which are excessive for the services rendered.

Amounts paid in attorney fees were obtainable for a total of 246 discharge cases. In 55, or 22 percent of these cases, the fees aggregated amounts less than 5 percent of the original value of the estate. In 132, or 54 percent of the cases, the amount of fee was between 5 and 9 percent of the original value of the estate. In 59 cases, or nearly a fourth of the group, the amount of fee was 10 percent or more of the original value of the estate.

Attorneys do not follow any uniform fee schedule in guardianship cases. An attorney in one community stated that the usual minimum fee in a guardianship case is $25. The fee will be increased according to the worth of the estate and the legal service involved.

It is interesting to note that in one case involving a $550 estate, the attorney's fees aggregated $150, or 27 percent of the original value of the estate over the 2-year period that the guardianship was in force.

One case record revealed considerable legal expense that could have been avoided.

> A father was awarded $4,500 in settlement of a claim growing out of the accidental death of the mother. The lawyer who obtained the settlement deducted 50 percent as his fee. He advised the father that the balance belonged to the three children in the family and that it would necessary for the father to obtain appointment as their guardian of estate to receive the money on their behalf. The father filed the petition and was duly appointed. The attorney charged $50 for helping the father file the petition.
>
> When the family decided to move to another State several months later, a lawyer offered to arrange the transfer of the guardianship for a fee of $35. The matter dragged in court so long that the father decided to see another lawyer. This lawyer informed him that the money rightfully belonged to him rather than to the children since the suit had been brought in his own name and the settlement was made with him. At a cost of $50 this lawyer had the guardianship terminated but the father had already paid $10 in court costs and $10 for corporate bond which were not refunded.

GUARDIAN FEES

The guardian of estate may be allowed a fee in addition to reimbursement for any expenses incurred in handling the business of the estate. The amount of fee is usually decided by the court by the rule of what is "just and reasonable." In Louisiana the law specifically entitles the guardian to 10 percent of income from the estate [*197*]. In Veterans Administration cases the guardian's fee is not supposed to exceed 5 percent of the ward's annual income. However, when unusual services are rendered, the fee is discretionary with the court.

It was difficult to determine how many guardians received compensation, because of the common court practice of granting support allowances in lieu of fees to parents acting as guardians of estate. The records showing guardian fees were mostly those in which banks and public guardians were active. Only 78 cases revealed complete information. In 42 cases guardian fees aggregated less than 5 percent of the original value of the estate, in 23 cases from 5 to 9 percent, and in 13 cases 10 percent or more.

BOND COSTS

There are bond costs only where the guardian gives corporate bond. The cost of corporate bond is practically standard in all States. It is computed on the basis of $10 for each $1,000 or fraction thereof.

A total of 318 cases showed bond costs. Since children's estates are usually small and the guardianship runs for some years, the cost of bond can be rather expensive. For example, in a guardianship involving a $650 estate, bonding costs exceeded 12 percent of the original value of the estate over the 8 years that the guardianship was active.

For all that, a bonding office in one of the communities visited indicated that the bonding of guardians of minors is generally unprofitable because the estates are too small and too active owing to their use for the child's current expenses. This company issues what are called joint control agreement bonds. This type of bond involves the company jointly with the guardian in the control of all deposits and withdrawals from the estate. This means that the company must countersign all checks. This sometimes presents difficulties when the guardian has failed to obtain proper court authorization.

One bonding office has found the countersigning of small checks so burdensome a task that it has decided to discontinue issuing joint-control agreements.

To minimize their risks, bonding companies subject applicants for bond to careful investigation with reference to their financial stability and character. This may involve the use of a professional investigation agency, credit company, or the bondsman's own check of the applicant's references, employment, and banking arrangements. One bonding company requires the guardian to file an annual account, which is subject to careful review.

AGGREGATE COSTS

The full cost of guardianship could be obtained for only 53 cases. Of this number, 7 showed accumulative costs of less than 5 percent of the original value of the estate, and 9 showed costs of 5 to 9 percent. Another group of 10 showed costs aggregating 10 to 14 percent, 13 showed costs of 15 to 19 percent, 11 showed costs of 20 to 49 percent, and 3 showed costs of 50 percent or more.

The factors chiefly responsible for the differences in costs appeared to be the number of items of cost included, the value of the estate, its activity, and the duration of the guardianship. The following cases illustrate guardianship costs in various situations.

A mother served as guardian of her son's estate for a period of 2 years. The estate was valued at approximately $4,200 at inventory. Its value at termination had increased by $300. The settlement showed deductions of $50 in guardian fees, $25 in lawyer fees, and $15 in court costs. There were no bond costs, as personal bond was given by the lawyer. The total costs in this case came to slightly more than 2 percent of the original value of the estate.

A trust company was guardian of a $63,000 estate belonging to a 2-year-old boy, who was living with his father in another State. The estate consisted primarily of real estate. A sale was effected within a year, and the guardianship was thereupon terminated. At settlement, the following charges were approved: $6,200 in commissions in connection with the sale of the property, $1,215 attorney fees, $1,200 guardian fees, and $98 court fees. All told the expenses aggregated almost 14 percent of the value of the estate.

A father resigned as guardian of his son's estate 4 years after appointment, for reasons not shown in the record. A grandmother was appointed successor guardian. At this point, an accounting was filed with the court which showed that the estate had depreciated to $11,500 from its original value of $13,610. Furthermore, the folowing charges had to be deducted: Attorney fees of $1,630,

guardian fees of $100, bond costs of $304, and court costs of $64. Altogether these charges consumed 15.6 percent of the original value of the estate.

In a case of a 17-year-old who was placed under the guardianship of an adult sister with respect to both his person and his estate, the guardianship was terminated when the boy reached majority. The settlement showed that $780 was left of the original $2,549 in the estate. The court allowed attorney fees of $70, guardian fees of $100, bond costs of $40, and court costs of $51, or a total of $261, or 10.2 percent of the original estate.

A minor, aged 20, came into an estate of nearly $16,500, over which a bank was appointed guardian. Upon termination 9 months after appointment, deductions were allowed of $150 for attorney fees, $50 for guardian fees, and $3 for court costs, or altogether 0.5 percent of the total value of the estate.

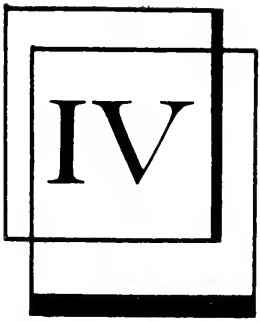
Another case terminated at majority involved an estate of almost $60,000. An uncle had received appointment as guardian 14 months previously. His final account showed an unexplained depreciation by $4,000 in the value of the estate. Against the original value, a total of $3,158 was allowed for costs, or slightly more than 5 percent, including attorney fees of $1,250, guardian fees of $1,500, bond costs of $400, and court costs of $8.

In another case a minor had real estate valued at slightly more than $600. The father had been guardian for 7 years. At termination, the real estate was shown to have depreciated in value to $523. Moreover, the following expenses were allowed against the estate: Attorney fees $25, guardian fees $15, bond costs $70, court costs $7, or a total of $117, or more than 18 percent.

One guardianship which lasted 11 years involved a full orphan. An aunt was the guardian of both person and estate by testamentary appointment, which meant that bond was not necessary. When the child reached majority the following charges were deducted from the $4,000 estate: Attorney fees of $900, guardian fees of $325, and court costs of $3.25, or a total of 18 percent of the estate's value.

Another case involved two children who lived in another State. Each had been left real estate worth $130. At termination of the guardianship 8 years later, each child received $66, or a little more than half the original value of his estate. The difference went into attorney fees of $30, guardian fees of $30, and court costs of $4.

In one case the guardianship procedure actually meant that it cost $75 in court costs and attorney fees to establish a minor's right to pay funeral expenses with the money from the mother's insurance. Practically the entire balance was used for transporting the body from another State where the mother had died and for the funeral.



Impact of Guardianship

9. Effect on Social Service Programs

Passage of the Federal Social Security Act stimulated the States to strengthen and extend their resources for meeting the needs of children. In some States it had an important influence on the creation of new public services to children.

There have been notable advances in some States toward developing comprehensive and correlated social services for children. A significant development, from the standpoint of this study, is the increasing attention being given to problems of guardianship.

AGENCY CONCERN WITH GUARDIANSHIP

Social agencies are finding questions of legal guardianship impinging upon many aspects of their work. They are often core problems in establishing a helpful relation with children because, as minors, children cannot lawfully request service or lawfully consent to plans and decisions made in their behalf. These are the prerogatives of parents or guardians.

Obtaining agreement and cooperation from parents to provide a proper legal basis for serving the children often presents problems. The problems become more difficult in the degree that the children have no parent available or must be separated from their parents.

PLACEMENT SITUATIONS

Placement service raises questions of guardianship inasmuch as the placement removes the child from his own home and separates him from the direct care and supervision of the parents. It involves the agency's assumption of parental functions, either for a brief time or for a long time.

Voluntary referrals

When the parents personally request the placement, problems are usually at a minimum, as it is understood that the parents will continue to carry legal responsibility for the child, standing by, as it were, for necessary consultation and consent.

Serious misunderstanding and difficulties develop, however, when care is not taken to make clear to the parents what is involved in making a proper placement and in maintaining the child in foster care. Working at cross-purposes has been averted in some cases by going over with parents, point by point as necessary, what needs to be done in serving the child. In some instances it has been found advisable to set down in writing the understandings and points of agreement that are reached with the parents.

Requests for placement sometimes raise questions concerning the guardianship rights of individual parents. In a case in which an agency's contact had been solely with one of the parents it turned out that this parent was acting against the wishes of the other parent in requesting the child's placement.

A similar situation arose in another agency over the placement of a child of divorced parents. The agency accepted the child from its mother without requiring proof of her claim that she had sole right to the custody of the child. It later developed that the divorce court had awarded sole custody to the father.

Not infrequently, relatives and other nonparent persons request placement for children. Most agencies indicated that they will ordinarily accept referrals from stepparents and close relatives without questioning their legal right to pass on the child. This policy is a cause of some uneasiness, however, because it is recognized that parents may still be in the picture. Some agencies

were further troubled by the fact that the practice tends to perpetuate an unclear relation for the child.

The practice of a local child-caring agency is of interest in this connection. This agency has adopted the policy of not accepting children from referring persons who cannot establish clear legal right to make decisions respecting the social welfare of the child. The agency requires supporting evidence from a parent who claims sole right to the child and from a nonparent person who represents himself as legally responsible for the child.

When such evidence cannot be furnished, the agency insists upon a clarification of the child's legal status by the juvenile court. The following are examples of situations that were referred to the juvenile court for determination of legal custody of the child.

> A mother of three children requested placement service, claiming that the father had deserted and that she was not able to make a home for them.

> The aunt of an orphaned child wanted the child placed in a foster home so that she could go out to work.

> Four children needed temporary placement while the estranged parents attempted to work out a permanent plan for them. The children were with the father who brought them to the agency. The mother had refused to consent to the placement plan.

In the view of the agency, this procedure has several advantages. It clarifies for the referent his continuing responsibility for the child, and it helps the child see the placement as a temporary arrangement necessary in the interest of his welfare. It has resulted in a perceptible shortening of the length of stay of children in foster homes.

Court commitments

Commitment by the juvenile court is the most common source of referral of children suffering from neglect, abuse, or improper guardianship. The commitment order grants the agency necessary authority to care for the child while making plans for his future return to his own home or, where necessary, for his permanent separation from his parents.

In many instances where commitment was considered necessary and desirable in the interest of the child's well-being, agencies reported difficulty in obtaining the cooperation of the court because of the construction of juvenile-court law.

> A State welfare department cited the case of children of a veteran whose wife was dead. The veteran had an advanced form of tuberculosis, and requested the agency to place the children in a foster home. His prognosis was poor, and when he learned that it would be necessary for him to leave the State for hospital care, he asked the agency to assume legal custody in addition to

providing care. The agency petitioned the juvenile court, stating in the petition that the children were without proper guardianship since the mother was dead and the father dying and out of the State.

The court dismissed the petition on the grounds that the children could not be considered neglected as long as they were under agency care. Although in this State the juvenile-court law defines neglected children to include those "without proper guardianship," the court did not consider the circumstances in this case to constitute improper guardianship in the meaning of the law.

Commitment orders may assign to an agency either permanent or temporary responsibility for a child. A temporary commitment is also recognized as vesting limited powers in the agency receiving the child. However, in many communities the temporary commitment order is subject to varying interpretations. In one community the juvenile-court judge and an agency executive found themselves attaching different meanings to it. The order usually reads that a designated child is committed to the designated agency for "placement" but is "not to be removed from the jurisdiction of the court."

The executive has assumed that such an order empowers him to arrange needed medical care for the child. At one time when an emergency medical situation arose in the case of a child temporarily committed to the agency for placement, the local hospital whose service was requested refused to give it on the agency's own request. When the hospital also refused to accept the written consent of the child's parents, the agency appealed to the court that committed the child. The court declared that it alone has the right to consent to medical care for wards of the court.

The permanent commitment order, on the other hand, is supposed to have the force of a complete transfer of guardianship to the agency receiving the child. However, it was interesting to find that many agencies and courts disagree about this interpretation. In several communities, juvenile-court judges are insisting that major plans for the child so committed must be referred to the court for approval. One State welfare department which interprets the permanent commitment order as a full transfer of guardianship rights to the agency, nevertheless follows the practice of obtaining written parental consent to plans for adoption or surgical operations in instances where the parents voluntarily cooperated in the commitment plan.

Three States in the study designate by law certain public agencies as guardians of the person of children committed to their care by juvenile courts [*198*]. The Connecticut law sets forth a complicated plan of divided responsibility for public wards among the State welfare department, special public institutions, and county public homes. The State welfare department is given original responsibility for all child wards under 6 years of age. When the children pass this age, they may be returned to the court for recommitment to a county home or a special institution, which thereupon becomes the guardian. If not recommitted by the age of 14, the children may continue

under guardianship of the State welfare department until majority or such earlier time as they may be discharged from care.

A proposal that would have centered public guardianship over the person of child wards of the State in the State welfare department was introduced in the January 1945 session of the State general assembly but failed of passage [*199*].

Michigan assigns statutory guardianship to the Michigan Children's Institute, a public State-wide child-placing agency. The guardianship may not extend beyond the sixteenth birthday of the child.

Missouri vests guardianship in the State welfare department as long as the child is in agency care.

All the agencies acting as statutory guardians indicated that most child wards pass from agency care long before the age of majority. Only 1 child was discharged by the Connecticut State welfare department in 1945 by reason of majority. In Missouri and Michigan, minor children may be discharged from agency guardianship entirely by administrative procedure. The agencies may return the minor child directly to his parents, leave him with his last custodian, or put him on his own if considered sufficiently capable of looking after himself. The Missouri State welfare department follows the practice of giving the child, his custodian, and the court which committed him, a formal notice of discharge. It makes no attempt, however, to establish a continuing guardianship for the minor child, and has not known the courts to do so on their own motion after receiving the notice of discharge.

LICENSING SITUATIONS

Many more children are placed in foster care independently than by social agencies acting on parental referral or court order. Laws in the States studied authorize the State welfare departments to license foster homes to protect the children who live in them. [*200*] Frequently the licensing laws exclude so many types of homes, and agency budgets are so inadequate, that this function is carried out on a minimal basis. As a result, probably large numbers of children separated from their parents live in homes lacking the minimum essentials of material security, safety, health, and social welfare.

Through their licensing functions, several State welfare departments have become aware of serious problems related to the guardianship of children in so-called independent foster homes. The following experiences are illustrative.

In California, an anomalous situation has arisen with regard to infants

released from maternity homes or hospitals to persons other than their natural parents. The State welfare department receives a report on these cases. After a brief waiting period, the department writes to find out if the intention is to adopt the child. If no reply is received at the end of 90 days and an adoption petition has not been filed, the department may refer the home to an accredited agency for boarding home licensing action. The department has no authority, however, to take court action to clarify the child's legal status through guardianship action.

A situation was reported in Florida which illustrates the difficulty of protecting children brought from one State into another which has no legislation for the control of the interstate placement of children.

> A woman from another State had been coming to Florida in the winter, bringing with her groups of children usually numbering 50 at a time.
>
> The children were acknowledged to be dependent, but when the woman was visited for purposes of a licensing study of her home, she maintained that she was the guardian of the children and, therefore, not subject to licensing under Florida law.
>
> Unable to produce letters of guardianship, she gave the explanation that her guardianship was by choice of the children, which she alleged was a proper legal procedure in the State from which she came. The State welfare department of that State was notified and looked into the situation, but by the time a report was received 31 children had disappeared.

In Michigan, many problems related to guardianship have been brought to light by the licensing program. The Wayne County office of the State welfare department has accumulated a case file of typical situations. Review of this material indicates that three types of foster homes most commonly raise guardianship problems: First, the foster homes that have become permanent homes; second, the foster homes that have been refused a license because they are not adequate for the care of a child; and, third, the foster homes that the court has found unsuitable as adoptive homes.

Many of the foster homes that have become permanent homes were found by the agency to be providing a sound setting for the development of the child. Though the foster parents assume full financial responsibility for the child, there are reasons why they do not want to adopt or cannot adopt the child.

In some of these cases, the child manifested a feeling of insecurity about his place in the foster home or the foster parents expressed concern lest the child's parents or other relatives interfere. To give the child a definite sense of belonging and to give the foster parents confidence that their plans for him will not be interfered with capriciously, the agency advised the foster parents to petition the court to appoint them the child's legal guardians.

Upon issuance of letters of guardianship, the agency withdraws from the case, since licensing of guardian homes is not required under Michigan law.

Parenthetically, the licensing of guardian homes is not specifically required under the laws of the other five States of study.

The following two cases illustrate situations in which the agency recommended legal guardianship.

> David, born in 1934, has been in the foster home since 1935. His parents are living and have several other children. They have not displayed any interest in David at any time even though they often lived quite near the foster home.
>
> While quite willing to give the foster parents full responsibility for David, they have refused to consent to adoption when the foster parents suggested it.
>
> The agency considers the foster home suitable for the child and, since there is every indication that he will continue to live in it, has suggested to the foster parents that they obtain legal guardianship as a means of establishing their rights to David and insuring protection for him.

> Walter, now 10 years old, has lived in the foster home since infancy. His mother is dead. His father has shown very little interest in him and has made practically no contribution to the cost of his care.
>
> Walter appears to be a well-adjusted boy, very much loved by the foster parents. Three years ago they initiated guardianship proceedings, but the natural father was unwilling to consent at the time. Later, he changed his mind, and the foster parents have finally been appointed guardians of Walter's person.

These cases suggest the usefulness of guardianship in situations where the permanence and completeness of free home placement becomes evident. At such time there should be clarification and legal recognition of the de facto relation between the child and the foster family.

A proceeding in guardianship where a social study is made and parents and other relatives receive appropriate notice offers an opportunity for such a clarification. It points up for the natural parents the need to decide whether they want to have the child. It enables an impartial study to be made to determine what would be in the best interests of the child, and it establishes the child in a legal relation that gives the foster parents clear rights to the child and provides the child security in the knowledge that his place in the family has a sure, legal basis.

The second type of situation presenting guardianship problems is the one in which the home has been refused a license, but the foster parents were able to keep the child by obtaining legal guardianship over him. Since guardianship petitions are generally handled without any clearance with social agencies or any social investigation, it is a simple matter for foster parents to secure guardianship when they wish to avoid meeting the requirements of the State licensing law. As guardians, they are not subject to the licensing law and the child cannot be taken from them because the home is below the standards specified in the licensing law. Parenthetically, legal guardianship was reported used to circumvent licensing in several other States.

> In one situation a 4-year-old girl had been "left" with a nonrelative family by her mother. This child was later discovered to be seriously retarded mentally.

When the agency visited the home it was found that all the adult members, including the foster mother, worked during the day. The child was left without responsible daytime supervision.

A license would not have been granted, but before the agency had made its decision the foster mother had applied for and been granted legal guardianship of the child.

The third type of situation raising guardianship problems is the one in which the home was considered unsuitable for adoption, but the foster parents were able to retain the child through guardianship. This situation was reported also in several other States.

An example of this situation is the case of a single, middle-aged woman who maintained a licensed boarding home in which she ordinarily had three to four children. Some of the children remained for several years.

John, aged 9, had been in her home since he was 3 months old. His mother died in childbirth. His father, who died 3 years ago, had been very attached to the child and maintained frequent contact with him. He suffered from cancer. Knowing that he was going to die, he decided to release the child to the foster mother for adoption. The adoption petition was refused by the court, however, on the grounds that the foster mother was unmarried.

The foster mother then filed for legal guardianship with the father's consent. The petition was approved without any investigation having been made to determine whether the woman whom the court considered unsuitable as an adoptive parent was suitable as a guardian of the person who would exercise virtually the same responsibilities as an adoptive parent.

The agency regarded the foster mother as capable of giving excellent care to infants, but questioned her ability to cope with the more complex problems of older children. Their doubts were being confirmed by signs that John was not adjusting to his home setting.

If a social investigation had been made at the time that legal guardianship was considered, it is possible that the foster mother might have been rejected and a more appropriate home found. As it was, there was nothing the agency could do, as there was no obvious neglect, dependency, or delinquency, which are the only grounds on which the court would have interfered.

ADOPTION SITUATIONS

Guardianship problems are posed more sharply by adoptions than by placements. Placements are often thought of as but temporary separations during a period of family difficulty which do not change the parents' legal responsibility for the child. Adoptions, on the other hand, are recognized as involving a permanent and complete separation of parents and child, accompanied by the formal transfer of all guardianship rights from the natural parents to the adoptive parents. In consequence, agency practices show a more careful regard for legal considerations in adoptions than in placements.

Nonetheless, problems related to guardianship arise frequently. Some problems stem from the fact that the child is accepted for adoption service through voluntary relinquishment by the parents. This may be formalized in a written surrender agreement signing over parental rights to the agency.

A number of agencies indicated that they have serious questions about the use of voluntary relinquishments. Some were not clear about the responsibility that voluntary relinquishment really transfers to the agency, particularly in view of the use of the phrase "for the purpose of adoption." They wondered if the phrase meant that the agency could not act for other purposes affecting the social well-being of the child. Several agencies have had the experience of having the voluntary relinquishment voided by the court and their right to act under it challenged not only by courts but by health agencies as well.

One State welfare department reported that a juvenile court in the State has refused to carry through adoption plans for children relinquished to the agency by their parents. This court declared the agency had no right to accept voluntary relinquishments and therefore could not exercise the parental right of consenting to the adoption simply on the basis of the surrender agreement. The court asserted that parents may transfer their rights and responsibilities toward the child only through judicial procedure.

In another State several private State-wide adoption agencies encountered challenges of their right to consent to medical care for relinquished children. Local hospitals have insisted on parental consent notwithstanding the fact that the relinquishment agreement surrenders to the agency all parental rights including "any and all right to the custody, services, and earnings" of the child.

Since it was not always advisable or possible to contact the parents, the agencies have been forced at times to request local juvenile courts to make the child a ward for the purpose of giving medical consent. In one county, the juvenile court refused to do this on the ground that the matter was outside its jurisdiction since the child could not be considered neglected so long as he was in agency care.

In view of these experiences, there is growing feeling that voluntary relinquishment does not provide too sound a legal basis for adoption service to children. Many agencies are turning to courts to effect the termination and transfer of parental rights. Several agencies utilize the legal guardianship proceeding for the purpose. As has been seen in table 7, 3 percent of the appointments of guardians of person by the courts of study during 1945 were requested by agencies for the purpose of facilitating adoptions. In some instances the guardianship was given to the prospective adoptive parents or relatives rather than to the agency petitioners.

Several agencies indicated a preference for legal guardianship procedure in situations where consent to adoption is needed. They contend that ap-

pointment of a guardian clarifies the legal situation, spares the parents the pain and uncertainty of having to exercise parental prerogatives after they thought they had given up the child, and spares the child the possible "stigma" of wardship by the juvenile court.

Inadequate State adoption laws provided another frequent source of guardianship problems in adoption situations. The California adoption law, for example, leaves the child's legal status unclear during the entire time his adoption is in process.

In some instances, attorneys have been quick to take advantage of this situation by obtaining legal guardianship for adoptive parents and thus strengthening their claim on the child. In the Los Angeles county court it was found that most of the guardianships created during 1945 to facilitate adoption showed the adoptive parents as guardians. This situation is causing concern because it makes practically impossible the removal of children from adoptive homes which the court by denial of the petition for adoption declares inadequate.

In Florida, on the other hand, the law makes the adoption agency the "official and proper guardian" of the child from the time of filing of the adoption petition through the period that the adoption is in process [*201*]. The State welfare department is given this responsibility for children who have not been permanently committed to licensed private agencies. This has involved the State welfare department in practically 90 percent of all adoptions.

The extent of agency responsibility as guardian has not been clarified. The State welfare department has assumed responsibilities only for investigating the petition, making recommendations concerning the adoption plans, appearing at hearings, and making recommendations concerning the final decree. While it recognizes a responsibility for supervision during the interlocutory period, in practice visits to the adoption home are made only occasionally. To all practical purposes, the right to decide and supervise the child's care is defaulted to the adoptive parents.

Moreover, it is the department's practice to withdraw from an adoption case when the court makes a decision. This has meant, in instances of denial of adoption, that the child is left in the adoption home without clear legal status. In the opinion of the circuit judge of one of the communities studied, this action is unjustified. In his view, the State welfare department has sufficient authority under the law to make other plans to assure the child proper guardianship.

Review of a sample of 25 cases selected at random from the agency's files revealed in some instances that the child involved in the adoption had been without clear legal status for a long time before the adoption petition was filed.

In one case a baby was placed in a foster home by a private agency. The mother voluntarily relinquished her rights a month later. A petition to adopt was filed 9 months later. The State welfare department was then notified and became guardian, as the child had not been permanently committed to the private agency.

Other cases revealed unmet needs for service and protection while the adoption was in process and the State welfare department was in the position of guardian to the child.

In one case a father of a child born out of wedlock petitioned to adopt his child, aged 8, who was living with him at the time of petition. The petition stated that the mother had abandoned the child by leaving her with the maternal grandmother, who in turn had passed her on to the father. The father was a married man whose wife agreed to the adoption plan.

The agency worker recommended that the father's situation was suitable for adoption but needed further study. There was, however, no follow-up and some months later it was discovered that the court had dismissed the father's petition and given custody to the mother.

Still another source of guardianship problems in adoptions is the laxity of court practices in adoption. The practice of a court in Louisiana has the effect of circumventing the intent of the adoption investigation. This court makes placements in adoption homes without requiring the adoptive parents to file for adoption promptly. As a consequence, the child may be in the home a long time by the time the adoption petition is filed. This means that when the State welfare department is called upon to make an investigation it may be faced with the alternative of either approving the home or leaving the child there without legal status, since the court will not order his removal unless it can be shown that he is being neglected or ill-treated.

Another court practice in Louisiana has the effect of nullifying the adoption. Under the State adoption law, action on the final decree must be initiated by the prospective adoptor by means of a petition [*202*]. The State welfare department is in position to know if the petition is filed, as the law requires it to make an investigation.

In situations where the petition has not been filed within a reasonable time, the agency advises the court that the child is without proper guardianship and, if the circumstances warrant, will offer to take custody of the child.

One instance was recalled in which the adoption was not consummated because of legal difficulties which could have been overcome with some effort on the part of the adopting parents. They chose instead to allow the matter to ride. Consequently the child was not legally adopted, had no clear legal status, and, in the opinion of the agency, could have been placed in a more suitable adoption home.

Since there was no obvious evidence of neglect, the court refused to grant the agency's request for custody, saying that the lack of legal guardianship was not sufficient reason for either the agency or the court to assume responsibility.

LEGAL GUARDIANSHIP SITUATIONS

Many individual social agencies and institutions in the States of study have authority to accept appointment as guardians by express provision of their basic enabling acts or charters. In several instances the enabling legislation or charter does not use the term guardian precisely, so that it is not always clear whether the agency can assume guardianship of estate as well as of person.

Interestingly, in one State included in the study a private child-caring agency was given authority to accept legal guardianship of the estate and person of a child by special legislation prompted by an emergency situation [*203*]. At the time, this agency was caring for a child who had a large estate under the mother's guardianship. When the mother was committed to a mental hospital, the agency believed it could assist the child better as guardian of his estate and person. However, by the time the legislature approved the bill granting the agency the right to accept guardianship, the mother had improved and was able to resume legal responsibility for the child.

Agencies now accept guardianship appointments most generally in the corporate name of the agency, but in past years it was common practice to designate individual staff and board members in their personal capacity. One Connecticut agency reported that it was a matter of many years before it was able to dissuade the local court from appointing individuals in the agency.

Several instances of individual staff members serving as guardians of children under agency care came to the attention of the study. The executives of two children's agencies reported they were serving as guardians of estate of a small number of children under their agencies' care. Reference was made previously to the fact that the county agent in Michigan and the property investigator attached to the staff of county welfare agencies in Michigan and California sometimes serve as estate guardians in their personal capacities.

Guardianship of person

Private social agencies were found to accept appointment as legal guardians of the person of children only in unusual situations. Several agencies indicated that their resources are too limited to permit them to assume responsibility for children that may have to continue for the entire period of minority. In the following case, the agency saw no other recourse:

The agency provides foster care and service on a temporary basis. It placed a little boy in a foster home upon request of his parents, who were both in ill health. Shortly after the placement, both parents died. The foster parents were elderly people who did not wish to assume either guardianship or adoptive responsibilities.

The agency would have placed the child in another home, but his adjustment was so substantial where he was that it decided to accept legal guardianship itself but maintain the child in the foster home. Supervision is provided regularly through contacts with the boy and the foster family.

In most instances where agencies accept guardianship of person, the object is not to provide the child continuing care and protection but to help him with specific plans for adoption, medical care, military service, marriage, and the like.

In these instances, the agencies consider their service completed after giving the necessary legal consent. In adoption situations, however, where the court has denied the adoption or the child is found ineligible for some reason, the agencies have found themselves obligated to continue responsibility for the child until arrangements could be completed for transfering the responsibility to the public agency providing long-time care to children.

Such a transfer is not always easy to make, however. In one community the juvenile court refused to act until the agency was formally discharged from guardianship by the probate court.

Guardianship of estate

Social agencies and institutions under both public and private auspices are accepting guardianship of estate for increasing numbers of children. The estates in most instances consist of monthly benefit payments from the Veterans Administration and the Bureau of Old-Age and Survivors Insurance, or other small amounts of money.

The agencies appear to follow different policies with regard to the use of children's funds. Some agencies accumulate the funds in savings accounts to be turned over to the children when they pass from agency care. Other agencies apply the funds to the current expenses of caring for the child. One agency follows both plans, basing its decision in each case upon the size of the estate and the child's special needs. This agency will save funds under $500. Money in excess of that amount will be used for special needs only, but if the child has a handicapping condition which may involve unusual expenses in later life, the entire estate will be kept intact for his later use.

In Connecticut, the State welfare department was authorized by recent legislation to accept guardianship over the estates of minor children who are in the care of public agencies and institutions. [*204*]

This legislation is the culmination of a long history of agency difficulties in accepting funds that were payable to children under agency care from Federal benefit programs. The State welfare director was reluctant to accept these payments in his own name, as he was advised by the State attorney general that he would thereby become personally liable. He requested legislation to permit him to accept such funds in his representative character under adequate legal safeguards with respect to audits and reports. The legislation enacted is not considered entirely satisfactory, however, inasmuch as it requires the agency to go to court and to pay the attendant court costs in each individual case. Moreover, the law sets a limit of $500 upon the amount of money that the agency can administer for each child.

The law authorizes the establishment of an office of estate administrator in the State welfare department. The duties of the administrator are defined broadly in terms of the usual responsibilities of a fiduciary. He is required to be under bond, which has been set at $20,000, but does not have to give bond in individual cases. He is not allowed any fees for his services, other than his fixed salary.

The office was set up in October 1945, but operations did not begin until almost the middle of 1946. At the time of visit in June 1946 only 13 accounts for children had been opened. All involved veterans' or social-security benefit payments. It is anticipated that there will be a large increase in accounts once the district offices of the agency and other State agencies and institutions have had the program explained to them.

Designation as payee

In an increasing number of instances, agencies are accepting designation as guardian in fact over funds made available to children by the Veterans Administration and the Bureau of Old-Age and Survivors Insurance. These programs will be discussed in chapter 11.

10. Effect on Financial Aid Programs

The six States included in this study have all established programs for providing financial aid to needy children who have been "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent" and who are living with one or both parents or with other specified relatives. [*205*] The social purpose of these programs is to make it financially possible for the relative caring for the children to maintain a home for them.

Title IV of the Social Security Act recognizes the principle of the children's right to public assistance and places on the Federal Government the responsibility of assisting the States in carrying out plans which provide for the support of needy children. The programs developed in the States have special significance for this study because they are designed to implement this right of children when the efforts of parents are inadequate to maintain them in health and decency.

It is to be noted, however, that neither title IV of the Social Security Act nor the implementing plans of the individual States give effective force to the concept of children as legal persons. Neither provides an approach to children definitely in cognizance of their legal status as minors. Neither requires that children receiving assistance should be represented in their relations with the assistance giving agency through a parent or guardian; instead, it is assumed that the specified relatives caring for children are able and qualified to represent them. Moreover, neither makes the opportunity to receive assistance available to all children comprehended by the term minor; rather, both hedge, and restrict the right of children to assistance by qualifying requirements that have no relation to the question of need.

LIMITATIONS OF STATE PROGRAMS

Under the permissive feature of the Social Security Act, the States have considerable latitude in determining the character of their programs of aid

to dependent children. Accordingly, the existing programs of the States reflect varying degrees of State acceptance of responsibility for meeting the financial needs of children,[3] both in the extent of coverage and the amount of payment made to children.

All the States operating plans approved by the Social Security Administration reported in June 1947 that slightly more than a million children, living in approximately 400,000 families, were receiving aid to dependent children. This number was the largest ever to benefit. It represents an increase of 56.1 percent from the 646,582 children in 255,578 families shown receiving aid in June 1945. The average payment per child also increased over the 2-year period, from $18.76 in June 1945 to $24.20 in June 1947.

The picture for June 1947 showed wide variations for the individual States included in this study in respect of both the extent that children were reached and the amount of assistance given them. Compared with the national rate of 23 per 1,000 of the total population under 18 years of age receiving aid to dependent children, four States in the study showed higher rates and two showed lower rates, as follows: Missouri 47, Florida 39, Louisiana 33, Michigan 26, Connecticut 14, and California 12.

That this coverage was often achieved at a sacrifice of the adequacy of assistance is suggested by the inverse ranking of the States on the basis of the average payment made per child. Compared to the national average of $24.20, the States studied provided the following grants: California $41.80, Connecticut $36.37, Michigan $32.67, Louisiana $17.61, Florida $14.18, and Missouri $12.82.

A large reason for the differences between the States stems from the varying conditions of eligibility incorporated into the State plans. [*207*]

Age and school attendance are conditions of eligibility in all the States. In Connecticut, Florida, Louisiana, and Michigan, only children under 16, or under 18 if regularly attending school, may receive assistance [*208*]. California makes assistance available to all children under 18 years of age regardless of school attendance [*209*]. At the other extreme, Missouri provides assistance only to children under 14 years of age with the exception of children between 14 and 16 years who regularly attend school or are physically or mentally unable to attend [*210*].

State residence of a year immediately preceding the application is a general requirement for the child, except in California, and for the person who accepts assistance in his behalf. Michigan, however, limits the residence requirement to the child and parent but not to other relatives with whom the child may be living.

Another general limitation is with reference to parental condition. All six

[3] Federal funds were made available to California on July 1, 1936, to Connecticut on October 1, 1941, to Florida on August 1, 1938, to Louisiana on June 19, 1936, to Michigan on August 27, 1936, and to Missouri on October 1, 1937.

States specify death, continued absence from the home, and incapacity of a parent. Continued absence from the home and incapacity of a parent are variously evaluated, however. In some States the absence of the parent must be substantiated by divorce, separation, desertion, or imprisonment. The length of absence is frequently an important consideration; for example, in California the parent must have been gone for at least 3 years [*211*].

The term incapacity is generally applied to both physical and mental conditions, except in California and Florida, where its meaning is restricted to the unemployability of the father due to tuberculosis or a permanent physical disability. [*212*]

Property considerations further limit eligibility in all study States but Florida. The property restrictions operate to exclude children with cash resources of various specified amounts in five States and with equity in real estate of various specified amounts in four States.

Another eligibility requirement in Connecticut and Michigan is that the home be suitable. Suitability of the home is variously evaluated in relation to physical surroundings and the character and reputation of the person caring for the child.

CHILDREN LIVING WITH RELATIVES

It was significant to find that all the States studied make grants to dependent children living with some relative other than a parent.

Michigan will support a dependent child in the home of any relative recognized by the Social Security Administration. California does not specify any requisite degrees of relationship. Florida, Missouri, and Connecticut specify grandparents, stepparents, brothers and sisters, stepbrothers and stepsisters, uncles and aunts. Connecticut additionally lists unspecified "other relatives." Florida and Louisiana add adoptive parents and adoptive siblings, grandparents and uncles and aunts by law, and great-grandparents, great-uncles and great-aunts. No State requires the relative to have legal guardianship of the person or estate of the child.

It was not possible to determine the number of children who received aid available in the States for dependent children through persons other than parents. A study of aid-to-dependent-children cases active in October 1942 in 16 States, including the State of Louisiana which is in the present study, revealed that 6.6 percent of the children were living in homes from which both parents were absent [*213*]. Recent studies in two of the States visited indicate somewhat larger proportions of children living apart from their parents. An analysis of new and reinstated cases during 1945 by the California

State welfare department shows 409 children living in relative homes, or nearly 9 percent of the total [*214*]. The Florida State welfare department analysis of active cases in October 1946 revealed 12 percent of the children living in homes of relatives [*215*]. No information is available to indicate whether the children were voluntarily transferred into the care of relatives by living parents or by court action through guardianship proceedings or otherwise.

In most States visited, the agencies providing aid to dependent children recognized that recipient children may sometimes require the services of a guardian of person or of property or a guardian of both person and property. In several localities the assistance agency recalled instances where the appointment of a guardian might have improved the situation of a child.

Generally, however, the agencies indicated that the question of guardianship has arisen infrequently. No agency has formulated any policies and procedures for identifying children needing legal guardianship and for arranging the appointment of guardians.

11. Effect on Federal Benefit Programs

Existing Federal legislation entitles veterans' children and the children of workers covered by old-age and survivors' insurance to money benefit payments. Ordinarily the payments do not go directly to the children but to fiduciaries who represent them.

Selection of proper fiduciaries often raises questions of legal guardianship for the agencies that make the payments. These agencies, the Veterans Administration and the Bureau of Old-Age and Survivors Insurance of the Social Security Administration, a division of the Federal Security Agency, have found it necessary to formulate definite policies and procedures.

These are more covering and systematized in relation to veterans' benefits than old-age and survivors' insurance benefits. In both agencies responsibility is placed with field offices to develop individual claims, decide to whom to make payments, and to exercise necessary caution and care to assure the proper use of payments for the child.

NUMBER OF CHILD BENEFICIARIES

That this is a large and rapidly growing job is evidenced by the mounting numbers of child beneficiaries and amounts of monthly benefits paid them in the country as a whole and in individual States.

Nationally, the number of children in current-payment status for social-security-insurance benefits was estimated at 417,870 on December 31, 1945. Two years later, on December 31, 1947, the estimated number had jumped to 524,783. The number of children receiving veterans' benefits, while smaller, made even greater gains over the same period. As against 57,327 children on the rolls on December 31, 1945, there were 134,355 children receiving benefits on December 31, 1947. The amount paid out in child benefits by the Bureau of Old-Age and Survivors Insurance rose from an estimated $5,194,431 in December 1945 to an estimated $6,702,476 in Decem-

ber 1947. Comparable financial figures on Veterans Administration child benefits were not available. It was interesting to find that every State in this study showed gains in the number of monthly child benefits in each program over the 2-year period under consideration.

Thus, in increasing numbers, Federal benefits provide support for children who otherwise might need public assistance. Already almost twice as many paternally orphaned children receive old-age and survivors' insurance benefits than receive aid to dependent children [*216*].

LIMITATIONS OF ELIGIBILITY

It should be noted, however, that not all children of veterans and social-security insurants receive benefits, nor are the benefits uniform for all children who do receive them.

Entitlement to benefits is subject to various conditions in both programs.

In the old-age and survivors' insurance program

Under the basic 1939 amendments to the Social Security Act, children of insured workers, (including stepchildren and adopted children under certain conditions), become entitled to old-age and survivors' insurance benefits upon the death of the worker; also, children whose insured parent has reached age 65 (or later) and no longer engages in employment covered by the law. [*217*]

The 1939 act specifies other requirements, including that the child must be under 16 years of age, or 18 if attending school, unmarried, not adopted into some other family, not working in employment covered by the Social Security Act for more than $14.99 a month.

In 1946, minor technical amendments to the Social Security Act liberalized the qualifying requirements in the 1939 act for stepchildren and adopted children and extended benefit rights for adopted children by permitting payment even though a grandparent, stepparent, aunt, or uncle, adopts the child; the requirement of regular school attendance during the child's sixteenth and seventeenth years was eliminated. [*218*]

The amount of benefits payable for each child depends on the wage history of the insured worker and sometimes upon the number of persons entitled to share in the benefits. For an individual child it cannot be larger than one-half the parent's primary insurance benefit, and for a family it cannot be more than $85 a month. [*219*]

In the Veterans Administration program

Children of veterans are entitled to various benefits such as compensation, pension, United States Government Life Insurance, and National Service Life Insurance [*220*]. Different conditions of eligibility are specified in law for each type of benefit. The amount and duration of benefits are also variable.

A child of a living veteran is entitled to an apportioned amount of the veteran's compensation or pension when he is not in the custody of the veteran. The amount of his share will depend on the amount that the veteran is receiving, which is based on the extent of disability, and the number of children eligible to receive a share. It may be as much as 20 percent of the amount being paid the veteran, in the case of a single child.

The majority of child beneficiaries of the Veterans Administration receive payments on account of the death of the veteran. The amount payable depends upon whether the veteran's death was due to a service-incurred disability or a non-service-incurred one. Another consideration is whether the veteran served in World War I, World War II, or peacetime. The benefits range in amount from $25 to $58 a month for a single child.

Payments may continue until the child reaches 18 years of age, or until the age of 21 if he is attending school. Marriage before these ages will terminate payments for both boys and girls. In case a child becomes physically or mentally disabled, payments may be continued beyond these years as long as the disability lasts.

Benefits from United States Government Life Insurance and from National Service Life Insurance are additional to any compensation or pension benefits for children named beneficiaries of such insurance. As a result, in some instances, a child may receive as much as $114 a month.

GUARDIANSHIP POLICIES

Once entitlement is found to exist, both agencies assume responsibility for determining who shall receive the benefits in behalf of the entitled child. Both agencies have discretionary power in selecting a proper payee. That of the Bureau of Old-Age and Survivors Insurance is broadest, in that the agency may select any "relative or some other person" [*221*]. The Veterans Administration, on the other hand, must select someone "legally vested with the care of the claimant or his estate" [*222*]. The regulations of both agencies prescribe when legal guardians may be designated payees.

In the old-age and survivors' insurance program

When it began to pay monthly benefits to children in January 1940, the Bureau of Old-Age and Survivors Insurance decided not to require the appointment of a legal guardian to handle children's benefits. This decision was based on various considerations, foremost of which was the agency's belief that it would be in the best interest of the child to designate as payee the person actually caring for him without regard to that person's ability to meet the test of legal guardianship. [*223*]

Nevertheless, the agency's claims manual placed the legal guardian at the top of the list of preferred payees. In agency usage the term "legal guardian" refers only to the guardian of estate. The legal guardian of person is not distinguished from other persons assuming responsibility for a child.

If the child is without a legal guardian, next preference is given the surviving parent, and then the person standing in the place of a parent, whom the agency terms a "guardian-in-fact." Classed with the latter are stepparents, relatives, and unrelated persons, including representatives of social agencies, foster parents, and personal friends, in the order listed.

The claims manual does not require strict adherence to this order. For example, it is suggested that in the event that the legal guardian is in a purely fiscal relation to the child it might be preferable to pay the benefits directly to the person actually caring for the child.

Exception is suggested if the child is in boarding-home care, in view of the instability of the boarding-home placement. However, if the home is supervised by an agency, the agency will be designated payee. Reluctance was indicated in several localities at paying benefits to public agencies whose policy is to apply the money to the current expenses of the child rather than to conserve it for his use when he passes from agency care.

As a matter of common practice, the local offices do not inquire into the availability of a legal guardian to receive the child's benefit money. However, if one makes his presence known and insists on his legal right to handle the money, he will be named payee. Several local offices try to get the legal guardian to agree to having the child's benefits paid to the custodian.

Generally, local offices are reluctant to pay benefits to banks or trust companies acting as legal guardians because they do not consider their representatives capable of maintaining a personal interest in the child.

In a number of instances in which a legal guardian was by-passed, the latter's complaint to the court appointing him caused a transfer of fiduciaries.

In several localities the local office pays benefits directly to minor children living independently or considered "responsible persons." In a number of instances an older minor was designed payee for younger brothers and sisters.

In the Veterans Administration program

The law governing the Veterans Administration provides that payments may be made to the guardian or curator or person legally vested with the care of the claimant or his estate, whom the Administration terms legal custodians. Under section 23 of the War Risk Insurance Act as amended and section 21 of the World War Veterans' Act, 1924, as amended, legal custodians may be recognized only when no guardian of the estate has been appointed. [*224*]

Regulations of the Veterans Administration prescribe the appointment of legal guardians in the following types of situations: (1) Where the child has accrued benefits in excess of $700 or receives more than $65 a month or where 2 or more children have accrued benefits of more than $1,000 or receive more than $90 a month, or where 3 children receive $110 per month with $20 for each additional child; (2) where the child's benefit payments are not needed for current expenses; and (3) where a suitable legal custodian is not available, or circumstances are that no one has legal custody of the child.

Legal custodians may include: The surviving parent, in the first instance, unless parental rights have been terminated by judicial action; then any other relative who is responsible under State law for the care and support of the children; next, the person standing *in loco parentis* to the child under the laws of the State; and, finally, any person who has been vested with custody by judicial decree.

Practically all regional offices visited indicated a preference for using a legal custodian wherever possible, which accords with the general policy of the Veterans Administration. Several reasons were advanced for this policy. One was that the legal custodian is in a better position to provide for the child's needs because the child usually lives with him. Another was that he is usually more amenable to agency supervision. Another and prime consideration is that the recognition of a legal custodian obviates the necessity of court procedure with the attendant legal and court costs.

The general Veterans Administration policy is to prefer appointment of near relatives as guardians of the estate and of the person and estate of minors. However, a number of the regional offices visited indicated a preference for banking organizations as guardians of the estates of minors. They consider banks and trust companies generally more reliable fiduciaries, more cooperative in keeping required records and making required reports, and more likely to invest the funds of the child profitably. While individuals may not be appointed for more than five nonrelated children in most States, there

is no limit on the number of guardianships that a banking organization can receive.

In several States a guardian appointed under provisions of the Uniform Veterans Guardianship Act may handle only the benefit money payable by the Veterans Administration. If the child has other assets, the appointment of a guardian of estate under the general law relating to guardians and wards must be petitioned. In one of the Louisiana communities included in the study the reverse situation exists under the local judicial interpretation of the guardianship law. The following case is illustrative.

> Karl's father died while in military service. When the will was probated and it was found that Karl was one of the beneficiaries, the mother was appointed guardian of his estate. A month later the mother was notified that Karl was eligible for veteran's benefits. However, to qualify to receive payments, the mother was required to go to the expense and trouble of court appointment for a second time.

EXTENT OF LEGAL GUARDIANSHIP

Current information with regard to the number of legal guardians serving child beneficiaries of old-age and survivors' insurance is not available. The Bureau of Old-Age and Survivors Insurance made a percentile estimate in 1945 on the basis of previous records and general knowledge rather than current statistical data [*223*]. That estimate, which is still considered reasonable by the Bureau, places the proportion of legal guardians at approximately 2 percent of total payees.

The Veterans Administration, on the other hand, has current information on the distribution of fiduciaries between legal guardians and legal custodians. The records for December 31, 1947, show that legal guardians constituted slightly more than 26 percent of the total.

Neither agency has current statistical data to show who are the people to whom payments are made in behalf of children without appointment as legal guardians. The complete percentile distribution of total fiduciaries by relationship to child, which the Bureau of Old-Age and Survivors Insurance made in 1945, is of interest here. It shows that in approximately 92 percent of cases the payee is a natural or adoptive parent, in 2 percent a legal guardian, in 5 percent a close relative other than a parent, in 0.5 percent a social agency, and in less than 0.5 percent either the child himself or an unrelated person.

PROTECTIVE DEVICES

For all children receiving benefits, including those provided the protection of legal guardianships, both agencies assume direct responsibility to assure proper expenditure of the fiduciary funds. This responsibility is exercised through the use of investigation, certification, and supervisory procedures.

Investigation procedure

In old-age and survivors' insurance cases.—As a matter of national regulation, claims or applications filed by nonparent persons are required to include a statement by the field-office manager appraising the qualifications of the applicant and citing the facts upon which the appraisal was made. The statement may be prepared on the basis of an office interview at the time of the filing of the claim or a formal investigation.

The field-office manager decides when formal investigation is to be made on an individual-case basis. Several offices indicated that applications of legal guardians and legal custodians are not investigated as a rule. A California office excludes from investigation applications of social agencies and of relatives who have had custody of the child for 6 months or longer.

The claims manual suggests the general character of the investigation, indicates specific considerations in special types of situations, and describes desirable methods for securing information. Of special interest is the following advice.

1. Stepparent applications should be carefully scrutinized as a precautionary measure inasmuch as the relation of stepparent and child is alleged to be an unstable one. It is specifically suggested that if the child has been in the custody of the stepparent for less than a year additional data should be obtained concerning the economic circumstances of the family, housing conditions, members of the household, and the adjustment of the child to his environment.

2. For social-agency applications it is considered advisable to determine whether the agency is operating in conformity with the State law and is chartered, licensed, recognized, or approved by the appropriate State authority. It is further advisable to determine whether the agency has foster-home facilities or can use such facilities of another agency. Negative findings will not bar the agency from receiving payments nor be considered as reflecting upon the agency's services, but will, rather, suggest the advisability of

reporting the case to the State welfare department after payment has been instituted.

3. In the case of applications involving payments to a foster parent in whose home the child has been placed by an agency, it should be determined whether the agency approves having payments go directly to the foster parent.

The investigation is usually centered on the child's immediate situation. It covers the type of care he is receiving, his physical living arrangement, school progress, and general adjustments. Most field officers indicated that their staffs were not qualified to evaluate the social significance of this kind of information.

The investigation is made by home visits to the applicant, to references, and to others wherever indicated. If the applicant lives in a rural area, several offices use a questionnaire form which is mailed the applicant to fill in and to have countersigned by the child who is 14 years of age or older.

In veterans' benefit cases.—After numerous complaints that guardians were dissipating or misusing benefit payments, and extensive confirmation by a formal Senate investigation [*225*], the World War Veterans' Act, 1924, was enacted to empower the Veterans Administration to actively protect child beneficiaries from unsatisfactory administration of their estates and from unsatisfactory living conditions [*226*]. Pursuant to this act the Veterans Administration authorized the making of social surveys of the living conditions of child beneficiaries preliminary to, and as a basis for, certifying the guardian as payee [*227*].

In contrast to old-age and survivors' insurance policy limiting investigations to selected nonparent applications, Veterans Administration regulations require that all applications be investigated. The investigation is called a social survey though it ordinarily avoids social evaluations and focuses upon the applicant's ability to handle funds and his legal relation to the child. However, it also reaches into the child's physical care, home and neighborhood environment, and personal adjustments. Substantially the same type of investigation is made in cases of legal guardians and legal custodians.

There are usually three parts to the social survey. The first consists of a home visit for the purpose of finding out how the child lives and his relations with the applicant. The second consists of checks of the applicant's references including business contacts and neighbors. The third involves working out with the applicant a plan for the use of payments for the benefit of the child including the apportionment of specific amounts to be spent and saved.

The survey is made by field examiners, many of whom are trained lawyers. It is of interest to note, however, that the chief attorney in the regional office has authority to request the assistance of the social-service division

attached to the regional office.

The social-service division may assist with initial investigations, with referrals to social agencies, and with supervision of problem cases [*228*].

It may further provide social services "to the extent of rendition of emergency services until responsibility can be placed with an appropriate State or local social agency" [*229*].

At the time of this study the social-service program of all regional offices was undergoing considerable expansion with the staffs being greatly augmented. However, only the regional office contacted in Michigan reported having worked out a plan for using the social-service division in connection with children's cases. Another regional office was considering an arrangement to have the social-service division make special studies and handle referrals to social agencies. Several regional offices indicated that they had questions about the ability of social workers to discuss legal and accounting problems with applicants.

Small samples of survey reports were read at several of the regional offices. These were practically uniform in content and length, but varied somewhat in organization. The reports at a California office were subdivided into four sections entitled "Authority," "Purpose," "Comments," and "Recommendations."

The authority was indicated by the date of referral from the adjudicator's office. The purpose was generally expressed in the phrase "to determine the proper person to be appointed fiduciary." The comments consisted of less than a page of descriptive material concerning the family situation and living arrangement of the child, the statements of references, and a summary of the plan devised for the use of benefit payments. The recommendations restated the plan for the use of benefit payments, indicated approval or disapproval of the application, and suggested whether the applicant should be designated legal custodian or legal guardian.

Use of social agencies

The regulations of both agencies are suggestive rather than mandatory concerning the use of social agencies by the local offices.

In old-age and survivors' insurance cases.—Social-agency contacts for the Bureau of Old-Age and Survivors Insurance were arranged by the regional public-assistance representatives of the Bureau of Public Assistance until September 23, 1947, when the responsibility was shifted to the regional child-welfare representatives of the Children's Bureau [*230*].

The services of the Children's Bureau representative include referral of summaries on child-beneficiary cases to State welfare departments, consulta-

tion with State welfare departments regarding such cases, and assistance with the development and extension of plans for referring cases to local agencies.

Two local referral plans were found in use. One involved clearance through the central office of the State welfare department and the regional office of the Bureau of Old-Age and Survivors Insurance. This plan was considered so cumbersome and time consuming by a field office in one locality visited that it discontinued making referrals although the State welfare department was located only a few blocks away.

Another method, found in Louisiana, permits direct referral between the local offices of the two agencies.

Referrals to State welfare departments are usually made for three purposes: (1) For investigation and advisory recommendation on the qualifications and availability of proposed payees; (2) for certifications of the qualifications of social agencies which have asked to be designated payee; and (3) for study and assistance in individual cases presenting social problems.

The claims manual suggests that the assistance of the State welfare department would be particularly helpful in cases (1) which present conflicts between two or more applicants, (2) in which there is an apparent absence of a qualified payee, and (3) in which exist circumstances that, if known to a public authority, would result in a change in the environment for the child.

It is required that notice of the selection of payee be sent to the State welfare department when a public agency is designated payee; and when a private agency is designated which lacks facilities for child placing and has not elected to have the assistance of a child-placing agency to examine periodically the placement needs of the child.

In cases of foster-parent applications, if the foster home is subject to State foster home licensing laws, it is prescribed that designation of the foster parent as payee be withheld until the State welfare department approves the foster-home situation.

In actual practice, the field offices visited indicated only sporadic use of the State welfare department. In Connecticut the estate administrator in the State welfare department was used as payee for children in public care. A Florida office cleared institutional applications to find out whether the institutions were licensed or not. A Missouri office referred independent foster homes for licensing.

The most frequent use of the State welfare department was made for investigations. A Florida office referred foster-home applications for investigation, but because of limited staff the State welfare department visited only the foster homes caring for very young children or children recently placed. A California office referred applications of nonrelated persons.

In Louisiana the investigation arrangement covered all nonparent applica-

tions but in actual practice only cases presenting questionable aspects are referred for study. Of the latter, those involving Negro children have been omitted by mutual agreement because of the difficulty of finding suitable foster homes for them. The problem was illustrated by the case of six siblings whose mother had killed the father. The children were taken into the home of an uncle who had 17 children of his own. The entire family occupied four rooms. The case was referred to the local office of the State welfare department but because the agency was unable to find another home for the children, they were allowed to remain with their uncle.

No field office could recall referring children for continuing social service although, interestingly enough, the 1941 study previously mentioned indicated that some 3 percent of the children in the sample studied were in situations involving social problems or situations where a change of fiduciary was in order. At that time such situations were found prevalent in approximately a fourth of the cases where the fiduciary was an unrelated person and a fifth of the cases where a distant relative was fiduciary.

In veterans' benefit cases.—The Veterans Administration has not formulated a policy of cooperation with State welfare departments. Regional offices work directly with local social agencies when occasions arise for the use of social-agency services. Arrangements with local social agencies are usually made by the office of the chief attorney rather than by the social-service division of the regional office.

While all the regional offices seemed aware of social agencies as possible resources, there was actually very little use made of them. A Florida and a Missouri regional office reported occasional use of local public and private agencies to help with initial surveys.

A Louisiana regional office used the State welfare department to make initial social surveys in rural areas and special corroborative studies of homes whose adequacy was questioned in the initial survey by field examiners. A California office indicated that it refers social-problem cases to local social agencies for casework service, but could not recall having done so within the year.

It was emphasized at all regional offices that the Veterans Administration does not assume any responsibility for correcting inadequate conditions revealed by the survey other than to refer such cases to local social agencies.

Certification procedure

In old-age and survivors' insurance cases.—A "report of contact" is prepared by the field office which summarizes the findings of the investigation. This report is attached to the application and forwarded to the area office for review. Nonparent applications are subject to special review by guardian-

ship reviewers at the area office. These persons have legal training but are not required to have any special social-work qualifications.

If the applicant's suitability is established, he is designated payee by formal procedure. This involves the signing of an agreement to apply the payments to the use and benefit of the child, to report any changes in the child's situation affecting his eligibility for the benefits, and to notify the agency when he no longer assumes responsibility for the child.

In veterans' benefit cases.—The social survey is routed to the regional attorney for evaluation and disposition. He decides whether the applicant should be approved as a legal custodian or required to be appointed a legal guardian by the local court of jurisdiction.

In the event guardianship is decided upon, the regional office initiates the proceeding and takes an active part in it. Where local conditions permit, the regional office will provide legal service and may foot the cost itself if the child's estate is very small. Where a private attorney is used, the agency endeavors to arrange with the attorney to accept a nominal fee ranging from $10 to $50, depending on the size of the child's estate and the work involved. The fee is deducted from the child's benefit payment when not paid by the agency itself.

The regional office is entitled under State law to receive notices of hearings and will have a representative present at the hearing unless waived. It requires that the guardian furnish adequate bond with sufficient surety before it will recognize him. In instances where the child's benefit is to be used entirely for support, the regional office, if consistent with State law, will try to get the court to waive bond and court costs connected with the filing of inventories and accounts.

Before certifying an applicant as a legal custodian, the regional office requires him to submit an affidavit of custody subscribed to by two disinterested persons. The affidavit sets forth the relationship existing between the child and the applicant and the witnesses; lists their legal residence; and certifies that the child does not have a legal guardian.

It also deposes that the applicant has legal responsibility for the care of the child and is exercising it. The witnesses testify that the applicant is a fit legal custodian, that the child actually lives with him, or the reason why he does not.

Upon recognition, both types of fiduciary are furnished details by form letter. The letter describes at length the duties and responsibilities involved, especially in the matter of keeping adequate records of receipts and disbursements and filing proper accounts. Account books are supplied. Frequently, specific instructions are added with regard to carrying out the plan of using the benefit money that had been agreed upon.

The fiduciary is required to indicate acceptance by return of a signed

statement of agreement to abide by the agency and court rules and regulations.

Supervisory procedure

In old-age and survivors' insurance cases.—The Bureau of Old-Age and Survivors Insurance does not require field offices to supervise payees or obtain accounts from them. Several field offices indicated that they make follow-up investigations in cases where there was some doubt about a payee's competence at the time of designation. All field offices stated that they rely largely on complaints to bring problem situations to their attention. In complaint cases payment may be discontinued until the payee has made a satisfactory explanation in an office or home interview. Where the complaint reveals the need for social supervision, the case may be referred to the State welfare department.

In veterans' benefit cases.—The Veterans Administration on the other hand, exercises continuous supervision over the activities of legal guardians and legal custodians.

The supervision is principally fiscal. The periodic account and social surveys are the major supervisory devices.

Accounting is not required from payees receiving less than $5 a month or an accrued lump-sum payment under $100. For amounts greater than these figures accounts must be filed at least once a year by both legal guardians and legal custodians.

Legal guardians may submit a certified copy of the account rendered to the court. The waiving of the filing of accounts by the court does not release the guardian from the obligation of filing an account with the agency. Legal custodians must use an account form supplied by the regional office or send their account books and have the regional office make out the account.

Accounts are checked by examiners for accuracy, consistency, and the propriety of investments and expenditures. Supporting evidence such as vouchers and receipts, are required except for amounts expended for support. If there is any question about the accuracy of the support account, vouchers and receipts must be supplied. Bank accounts are routinely verified. Other assets are annually inspected.

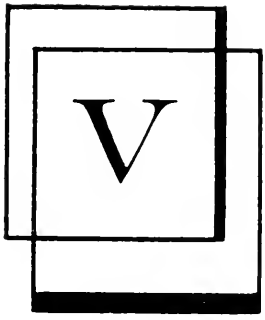
If the account is not filed within a reasonable time or if the examination reveals unexplained discrepancies, payments are stopped. If the payee fails to make indicated adjustments, action is taken against him. If the payee is a legal guardian the court is petitioned to remove him and appoint a successor guardian or to require a satisfactory adjustment. There were several instances during 1945 where regional offices protested court acceptance of accounts that were considered inadequate or that evidenced misuse of funds.

Several other instances were noted where regional offices had protested the court's approval of what seemed to be excessive charges. When appropriate, cases are appealed to higher courts.

The agency exercises control over the fiduciary between accountings by placing definite limits upon his discretion in the handling of the child's funds. The fiduciary must open a separate checking account for each child and the bank balances must be maintained above the point at which special charges would be involved. If there are funds surplus to the needs of the ward, the excess must be invested as provided by State law. Legal custodians must invest only in government bonds.

Intermediate social surveys may be made in indicated situations. As a rule only cases in which some unsatisfactory conditions were found in the intial survey are subject to this follow-up. This survey is usually made by a regional field examiner but sometimes a local social agency may be requested to make it.

The regional offices could not estimate the proportion of cases in which follow-up surveys are made. No reports of such surveys were available for reading, but it was indicated that they generally consist of an evaluation of changes in the child's situation since the initial investigation, together with a review of how benefits had been used. As with the initial-survey reports, social evaluations are voided. None of the offices visited reported the necessity of referring a case to a social agency on the findings of the follow-up survey.



Summary and Conclusions

12. Problems in Guardianship

It is a firmly established principle in this country that every child should have somebody legally responsible for him throughout his childhood.

This is because we believe that a child needs a secure and stable environment if he is to grow up and develop properly and have a satisfying life; only constant and consistent attention from an adult can provide a child that kind of environment.

Another reason is that the child occupies an anomalous position in our laws. Though recognized as having individual rights, he is presumed not to have the capacity to exercise them or to care and manage for himself.

That means that somebody must take charge of him. Hence, laws for child guardianship.

UNDERLYING PHILOSOPHY

The idea of guardianship is to supply continuous, responsible management for the child who needs it "by reason of minority." The statutory definition of this phrase is practically the same in all the different States. It

embraces all children below the age of 21 who have not married or otherwise been lawfully emancipated.

When we consider that children under 21 years of age constitute about a third of the total population and in short time become the adult population, we gain some idea of the extent of need for guardianship and its importance for the child and for society.

In all States the responsibility of guardianship belongs to parents in the first instance. In all but a few States, the father and the mother are considered joint and equal guardians of the child born in wedlock, and the mother is considered the sole guardian of the child born out of wedlock.

Parental guardianship is called natural guardianship. Yet it is not an absolute right of the parents but a trust which at all times must be exercised for the child's benefit. It must yield to the child's interests and welfare. And it must confine itself to matters pertaining to his person.

What if the child acquires property? What if he loses his parents? What if his parents cannot discharge the functions of guardianship in accordance with the standards of child care and protection demanded by society?

Clearly, it then becomes the duty of the State as *parens patriae* to protect the child by supplying him with a supplementary or substitute form of guardianship.

LEGAL PROVISIONS

Every State has recognized this responsibility toward its children by making provisions in law for the appointment of legal guardians for children. Three plans of legal guardianship are generally provided by State laws. One extends to the person of the child, another to his estate, and a third to both his person and his estate.

The provision of legal guardianship is recognized by law as involving various types of services to children by the State. First is to determine and designate who shall have guardianship over a particular child. Second is to make a proper public record of the appointment of the guardian and to maintain that record to show what happens to the child and his property under guardianship. Third is to oversee and help the guardian to serve the ward's best interests and welfare. And fourth is to discharge the guardian, by removal if necessary, when his services are no longer needed or desirable.

Though some of these services are administrative in character and others judicial, practically all States assign to courts the entire job of rendering them. There are a number of reasons for this. Questions about the rights

and relations of persons are the traditional concern of courts in this country. We hold it incompatible with democratic principles for one person to exercise power and authority over another's person or property without the sanction of the courts. We have long relied on due process of law to secure our individual rights, fix our individual responsibilities, and enforce the obligations we owe one another and society as a whole.

Another explanation lies in the historical fact that the guardianship laws of most States were enacted at a time when courts were the only agencies equipped to discharge public responsibility for the protection of children. Public welfare departments are relatively new instruments in States for the protection of children.

Only certain courts may act for the State in guardianship matters. These courts are variously designated in the different States. But everywhere they are those courts or divisions to which is also entrusted the administration of estates of deceased persons. This is because court organization for the guardianship of children still reflects the outmoded concept that the child is the property of his parents. The most common name for the courts is probate court.

PLAN OF STUDY

How well do probate courts serve children who need legal guardianship?

This study inquired into the work of two courts in each of six States selected as representative of varying geographic backgrounds and various patterns of guardianship law and procedures. The States are California, Connecticut, Florida, Louisiana, Michigan, and Missouri.

The study examined State legal provisions for guardianship, and the way that individual courts were organized, operated, and related to community agencies to fulfill the requirements of the law.

It analyzed court records of children whose guardians were appointed or discharged during the year 1945, to ascertain the flow of cases into court and the characteristics of guardians and wards.

It made close-up studies of a small number of children under guardianship to find out how they were getting along.

It consulted many State and local social agencies, including local offices of Federal agencies paying financial benefits to children, to learn their problems with regard to the guardianship of children.

MAJOR FINDINGS

What has it found out?

In substance, this: Legal guardianship procedure is used infrequently as a resource for the protection of children, because the law does not require that it be used and no adequate machinery has been provided for using it effectively.

Specific findings may be summed up as follows:

The need for guardianship of the person is not being met.

Children are growing up in a kind of second-class status because their parents are dead or incompetent and no one else is legally authorized to act as their personal guardian.

How many children are in these circumstances cannot be determined. Nor can it be estimated. No community has available any accurate information on the extent of orphanhood and other conditions that deprive children of the natural guardianship of their parents. And no court has available any complete statistics on the number of children currently under legal guardianship of the person.

Statistics compiled from court records for the year 1945 show that 1,450 children were supplied personal guardians that year by the 12 courts in the study. These courts serve populations including nearly 1,350,000 children under 21 years of age. Of this number, about 142,000 are estimated as living away from home. The appointments, therefore, can scarcely be assumed to be meeting in full measure the local needs for personal guardians.

That they do not do so is indicated by the fact that all courts were found to concern themselves with the personal guardianship of children only when petitioned to do so. Instances of the courts acting on their own motion were extremely rare, despite the fact that some of the children for whom the courts were asked to appoint guardians of estate were identified as full orphans who had no one legally responsible for their person.

Another indication that the needs of children for personal guardianship are not being met is the fact that in addition to those children who ordinarily did not come to the attention of the courts until they chanced to acquire estates subject to legal guardianship, there were others who did not come until they needed legal consent for such plans as adoption, medical treatment, entry into military service, or marriage. In more than half of the appointments of personal guardians, an estate guardian was appointed

at the same time. A little more than three-fourths of the appointments of guardians of the person only, definitely involved children who needed some kind of consent from a legal guardian.

A basic reason why more children are not supplied personal guardians by the courts is that no State requires the appointment of legal guardians for children who lose the natural guardianship of parents through death or legal action. As a matter of fact, existing legislation offers alternative methods for transferring responsibility for children. One permits parents to relinquish their rights voluntarily through such informal means as passing the children on to others who thereupon become the guardians in fact by virtue of standing in the place of the parents (*in loco parentis*). A more formal procedure provided by the laws of some States involves the signing of surrender papers or the designating of a guardian in a deed or a last will and testament. These instruments may not require court approval. Statutes also authorize juvenile courts to terminate parental rights and assume wardship over the children directly, or to transfer the responsibility to some agency, institution, or individual, by commitment process.

Another reason why more children are not placed under personal guardianship is the lack of effective procedure for finding and routinely reporting children needing personal guardianship. Two of the six States in the study were found to place a duty for reporting upon certain individuals—in one instance public officials and in the other relatives of the child. But even in these States practically all the petitions were initiated by persons who wanted the child.

Still another reason is the lack of provision for finding suitable guardians and for paying guardians of children who have no estates which can be drawn upon for the purpose.

Many appointments of guardians of person were found to be appointments in name only. The guardians assumed little actual responsibility. Those appointed to care for both the person and the estate of the child often confined their activities to the child's estate, leaving his personal welfare to whomever he lived with. Those appointed to give legal consent, ordinarily limited their attention to the matter requiring consent, although in many cases the letters of guardianship set no limit to their powers and were not revoked after the consent had been given.

Relatives were named guardians in the great majority of cases. Among nonrelatives found receiving appointments as personal guardians of children were public estate administrators, bank trust officers, attorneys, foster parents, and persons whose petitions for adoption of the child were before the court. In some instances social agencies were named guardians, but for the most part only for the purpose of planning and arranging adoption. Occasionally two persons were designated joint guardians or coguardians of a child.

Guardianship of estate is often provided unnecessarily. For many a child the appointment of a guardian of estate is a meaningless, wasteful, and expensive procedure which adds nothing to the protection that he already enjoys.

In a great majority of cases, the appointment adds up to the child's paying a myriad of legal and court charges for the privilege of having his own parent handle his money. Of the estate guardians appointed during 1945 by the courts studied, 70 percent were the parents of the children concerned.

Most estates of children contain no real property or investments requiring active administration. Approximately 80 percent of those studied consisted of cash in the bank, monthly benefit payments, and similar assets applicable to the current expenses of the child. Over 40 percent were valued at less than $500, despite the fact that most of the States studied permit parents to handle small amounts without being appointed estate guardians. Cumulatively, nearly 60 percent were worth less than $1,000, nearly 80 percent less than $2,500, and nearly 90 percent less than $5,000.

Appointments are made in a perfunctory manner. Whether apppointing guardians of the person or guardians of the estate, many courts do not see the child or the guardian. Frequently the arrangements are made through attorneys. The courts as a rule accept the petition of the first person who happens to file one. Few courts use social-agency service to inform themselves about the child's situation and the fitness of the person desiring appointment as personal guardian. Nor is the competence of estate guardians formally investigated. Notice is not always given to persons legitimately interested in the appointment. Ordinarily, in most States, there is no hearing on the appointment unless a conflict arises. The petition is often disposed of the same day it is filed.

The courts are poorly equipped for the job. Court organization in most States does not make for prompt, efficient, and effective guardianship service to children. There is a confusion of concurrent jurisdiction over the person of the child, a waste of judicial talent upon administrative functions, inadequate facilities and personnel, and lack of a unified, social approach to children's problems.

Most courts handling child-guardianship cases are cluttered with a variety of diverse responsibilities. Some serve populations too small to provide the necessary volume of business to support the court adequately and to enable the judge to acquire sufficient experience and skill in children's cases. Others have too large a volume of business to permit the judge to individualize cases and give proper attention to social as well as legal considerations. The absence of State supervision of the business of the courts is evident in varying caseloads and in the use of varying procedures, practices, and forms.

The judges handling child-guardianship cases are not required to have a special background for work with children. Nor are they required to specialize in children's cases. Some States do not require them to be lawyers. In States where guardianship jurisdiction rests in a separate probate court, the judge of probate often has less desirable tenure and salary than the judges of other courts hearing cases in the first instance.

Administrative court services are generally inadequate. The clerk's office is seriously understaffed at many courts. Specialist personnel such as financial investigators, accountants, and auditors, are lacking at all but the larger courts. No court employs social workers. Heavy reliance is placed on private attorneys to perform functions related to guardianship proceedings. Often, however, this arrangement involves a greater expense to the child than the court is permitted to charge.

Many courts lack adequate physical facilities. Some are severely cramped for office space and lack suitable and dignified courtrooms. Record and filing systems are antiquated and duplicating at most courts. Satisfactory index systems to identify children's guardianship cases are not available. Confidential information in the records is often inadequately protected. As a rule, the courts do not systematically inform the public concerning their work. None publishes adequate statistics concerning child-guardianship cases.

The courts are not accustomed to taking a social approach in handling guardianship matters. Estate matters usually absorb their time and attention. This is often a financial necessity for the courts that depend upon fees to meet their pay rolls and other expenses.

Supervision of the guardian is lax. Practically no follow-up of the child under personal guardianship is made by the courts unless or until a petition for the removal of the guardian is presented. Except for the requirement of a nominal bond in three States, the guardian of person is completely outside the superintending control of the court appointing him. He is under no requirement to submit an accounting of his stewardship at any time. Nor is he required to submit to formal discharge procedure. The courts generally maintain no contact with him and, to all practical intents and purposes, permit personal guardianship to be exercised and to lapse at the guardian's pleasure.

The guardian of estate, on the other hand, is subject to a number of legal controls by the court. He must file bond, inventory, and periodic accounts. He must submit for court approval his plans to invest, sell, or disburse the assets of the child's estate. His settlements with the child must be sanctioned by the court. He must submit to formal court termination of his guardianship.

In actual practice, however, the courts are extremely lax in enforcing these legal requirements upon the guardian of estate. Generally, the smaller

the estate, the less the attention from the courts. Since most children's estates are small, few receive active supervision from the courts. This is borne out by the records, which disclose many instances in which inventories and periodic accounts have not been filed, the bond has not been maintained in an amount adequate to cover possible losses resulting from maladministration, and investments and expenditures have been made without advance authorization from the court or subsequent formal approval. Furthermore, final settlements between guardians and wards often are made outside the court, and the guardian is discharged without an accounting to the court.

Despite the considerable evidence of the records that guardians had not complied with the legal requirements governing estate guardianship, there were only a few instances in which the courts removed guardians or otherwise invoked the penalties provided by law for noncompliance.

Social agencies feel the impact. Increasingly, the experience of social agencies tends to focus attention upon guardianship as a child-welfare problem and to thrust legal questions of guardianship to the forefront of considerations for establishing service relations with children.

Many troublesome guardianship problems are encountered by agencies in connection with adoptions, placements, the licensing of foster homes, and the handling of benefit funds made available for children under agency care.

The root of many of these problems is the lack of an approach to children in law and in practice that integrates legal and social considerations and provides protection for the children's rights and status at the same time that their welfare is provided for.

Agency intake practices do not always allow for sufficient inquiry into a child's legal status and the legality of guardianship exercised over his personal and property relations to provide a clear and definite base on which to rest the agency's services and the child's adjustments. The resultant uncertainty about who has legal responsibility for the child often hampers agency planning in the child's behalf.

Existing legislation defining the status and legal relations of children further makes for confusion in agency practice. Special sources of confusion are the absence of definite legal requirement that all minors have guardians, and the lack of clear distinctions between guardianship and custody and between juvenile-court wardship and probate guardianship.

Further complications result from the lack of clarity of juvenile-court orders committing children to agencies. The commitment orders frequently do not state whether parental rights have been terminated nor do they specify what rights are transferred by the court to the agency receiving the children.

Children voluntarily given up by their parents to agencies for adoption present special problems with regard to their guardianship status. The

agencies' right to act for these children has been challenged in some places by the courts granting adoptions and by various health agencies which had been called upon for medical services to the children while the adoption was in process. These courts and health agencies have contended that the voluntary relinquishment agreement does not constitute a valid basis for agency exercise of parental guardianship rights.

Some agencies have resorted to guardianship procedure to clarify their legal right to act for children. In general, however, agency use of guardianship procedure has been very infrequent. In instances agencies have accepted court appointment as legal guardians of the person, estate, or both, of children already in agency care. However, there is some feeling among private children's agencies that the assumption of the long-time and general responsibilities of guardianship is outside their service function and their normal resources. In some States certain public agencies and institutions are designated by statute the legal guardians of children committed to them by the juvenile court. In most instances the guardianship lapses automatically when the children leave agency care. Some agencies discharge children from care entirely by administrative procedure, without returning the children to the courts which had committed them, for a reassignment of guardianship.

Instances of the use of guardianship procedure to circumvent the requirements of the adoption and licensing laws are coming to the attention of agencies. Persons who have been denied adoption of a child or refused a foster-home license because of their unsuitability or the inadequacy of their homes, are obtaining a legal hold on the children through guardianship, in order to prevent removal of the children from their care.

Federal benefits enlarge the problem. Rapidly increasing numbers of children are becoming financial beneficiaries of veterans' and social-security programs. Of the hundreds of thousands of children now receiving monthly benefits from these programs, an estimated tenth do not have a parent or legal guardian to receive payments for them.

In most instances the payments are made to the persons who happen to be caring for them. It is not the policy of the paying agencies to require these people to qualify as legal guardians of the children's persons, or of their estates, even when the payments aggregate amounts defined by State law as constituting estates subject to legal guardianship.

Except in special cases, the fitness and suitability of payees to have responsibility for caring for a child is not determined by qualified social investigation. However, some kind of investigation of their ability to handle money is usually made, and one agency imposes accounting and other controls upon the payee, even when he is a parent and the payments aggregate amounts not subject to legal guardianship under the State laws.

Adequate legislation is a basic need. The State laws of guardianship are very old. They have come down to the present day substantially unchanged. Consequently, in various respects they are archaic, inadequate, unrelated to other child-welfare legislation, and inconsistent with twentieth-century concepts of child protection.

To the substantive inadequacies of the laws that have already been mentioned may be added the absence of a uniform definition of the child subject to guardianship, the absence of distinctive nomenclature for guardians of the person and the estate, and the absence of precise and distinguishing definitions of such terms of the statutes as guardianship, wardship, custody, care, and control. Several constructional problems also need to be mentioned.

One constructional problem is presented by the fact that the guardianship law is attached to probate law which deals principally with estates. This has resulted in a conspicuously lopsided development of the property elements of the law, with an almost complete absence of the social safeguards and protective devices that are incorporated into modern legislation relating to children.

Another problem stems from the fact that the law applies to legally incompetent persons generally rather than minor children particularly. There is a consequent detailing of elaborate legal procedures that have little place and applicability to the situations of children.

A third problem is in the fact that the guardianship law is not correlated with other laws affecting the rights, status, and relations of children. Conflicts and ambiguities exist in relation to parts of juvenile-court laws, youth-authority acts, laws relating to the authority of agencies and institutions over children, and laws regulating child legitimation, adoption, relinquishment, indenture, deeding, placement, and commitment.

13. Proposals

In drafting recommendations based on this study, the Children's Bureau has had the advice of a group of people from the fields of law and social work. Among these people are lawyers, judges, professors of law and social work, officials of public welfare agencies of Federal, State, and local governments, and representatives of various private organizations interested in child welfare. These advisers are listed in appendix B.

During a 1-day meeting on June 14, 1948, to consider the findings of the study and to advise on the formulations of recommendations, this advisory group recognized that—

1. *The subject of guardianship has many complexities and ramifications both in its legal aspects and in its social aspects; it needs a great deal more study.*

   The group therefore advised (*a*) that the Children's Bureau extend study in this field and in closely related fields, and (*b*) that the Children's Bureau stimulate and promote study by other organizations, particularly legal- and social-research bodies.

2. *Many of the provisions relating to guardianship are antiquated, and their utilization under today's conditions presents many problems; they need considerable modernization and implementation.*

   The group therefore advised (*a*) that the Children's Bureau stimulate and guide appropriate changes, through publications, consultation, and advisory service, and (*b*) that the Children's Bureau make its services available to State agencies duly constituted to revise existing legislation on the subject and to improve available legal and social machinery for providing guardianship to children.

3. *There is general lack of awareness and understanding of the guardianship proceeding, not only as a resource for the protection of the person of the child but also as a means of providing social agencies with a legally responsible client with whom to work on a professional basis; information needs to be furnished on the availability of this resource and on the need for the establishment of such legal responsibility.*

The group therefore advised that the Children's Bureau undertake continuous publicity and interpretation of the whole area of child guardianship in cooperation with other Federal agencies, State and local welfare departments, bar and judicial bodies, social-planning bodies, and citizen groups.

RECOMMENDATIONS

In the light of the findings of the study and the discussion of the advisory committee, the Children's Bureau makes the following recommendations in regard to sound legislation and its greater utilization for the guardianship of the person and of the property of children.

Guardianship of the person

1. A special court proceeding should be established to consider a child's need for guardianship of the person separately from his need for guardianship of the estate.

Legal guardianship over a child's person constitutes a substitute for the parent-and-child relationship. The guardian of the person of a child should therefore be appointed in a court proceeding in which the recognized principles of child protection and family welfare are controlling. Present legislation provides a setting in which emphasis is upon property considerations. There is need to bring existing provisions into harmony with modern concepts of child protection as reflected in such other types of legislation affecting the parent-child relationship as the more modern laws on adoption.

Furthermore, the appointment of the guardian of the person of a child should be clearly distinguished in law from other methods of safeguarding the child, such as relinquishment and termination of parental rights, transfer of legal custody, and the voluntary acceptance of the child by individuals and agencies for care and custody.

The laws relating to the establishment and transfer of legal responsibility for the child should therefore be correlated, and existing conflicts, inconsistencies, and ambiguities in language and provisions should be eliminated. There is particular need to introduce distinctive nomenclature for such relationships as guardianship of the person and guardianship of the estate, to define precisely the meaning of such terms as guardianship, wardship, and custody, and to state clearly the specific elements of authority and

responsibility inherent in guardianship of the person that distinguishes it from other forms of substitute for the parent-and-child relationship.

2. The special court proceeding for the appointment of the guardian of the person should be available in behalf of the child whose parents are dead or who is otherwise deprived of parental care and protection.

The legal concept of the child as lacking capacity for independent action and judgment carries with it an obligation to supply him a medium through which to assert his interests and exercise his rights. The medium provided by law is the device of guardianship. The child's own parents are presumed to be his natural guardians. Adoptive parents stand in the place of natural parents. When natural or adoptive parents are dead or when questions arise concerning their competence to act as natural guardians, recourse to the court for clarification and fixing of legal responsibility for the child is indicated but should not be required by the law.

The findings of this study show clearly that it would be impracticable, in the absence of a concurrent development of judicial and administrative facilities, to require, by a legislative mandate, that a guardian be appointed for every child who is without a natural or adoptive parent. In their present stage of development, court and social-agency resources would be disastrously overtaxed by the vast extension of work that would follow from such a course.

Nevertheless, there is need for a positive statement of policy in law, declaring the State's responsibility for securing the protection and legal representation of the child who lacks parental guardianship and the child's right to definite legal status in relation to any person or agency assuming custody of him.

Implementation of these points of public policy should take the form of specific provisions that would assure the availability and use of the guardianship proceeding in behalf of any child who needs the protection and security of a legal guardian.

One such provision should require child custody to be assumed on a legally responsible basis and should provide the guardianship proceeding, so far as feasible, in the interest of effecting secure and responsible relations. In this connection, there is need for the establishment of some method or basis for ensuring against the irresponsible transfer or abandonment of the custody of children so that, to the extent practicable, the duty shall be placed upon the custodian of the child to establish the relation on a legal basis.

Another provision should emphasize the desirability of using the guardianship proceeding at the earliest discovery that a child is without the protection and legal status of parental guardianship. Emphasis upon such a preventive use of the proceeding should have the effect of forestalling the

tragic consequences of neglect and maladjustment that often befall the child for whom responsibility is transferred casually. It should have the further effect of reducing the currently prevalent deferment of guardianship action until a crisis arises in the life of the child that involves the securing of legal consent from a parent or guardian, as in situations of medical care, military enlistment, and marriage.

Still another provision should emphasize the peculiar responsibility falling upon social agencies that deal with children, including public-assistance, social-insurance, and veterans' agencies, to back up the public policy in regard to the guardianship of children by taking all expedient steps towards the appointment of legal guardians of the person of the children who are without parental protection. These agencies should be charged with the special duty of reporting to the proper court, for such action as it may deem advisable, any child discovered by them to be without the guardianship of a parent or legal substitute. Reporting should be facilitated by clearance and referral procedures. In this connection, it would be desirable to establish a system of clearance and referral between the various courts dealing with children in the community.

There should also be a provision to permit a child 14 years of age or older who has no guardian of the person to institute action to establish his legal relationship to some person or agency of his choosing.

Furthermore, the law should clearly define the child who is subject to legal guardianship. Provision should be made for removing from the necessity of guardianship any child 18 years of age or older who has married or whom a qualified court finds sufficiently mature and self-reliant to manage for himself. A divorced child under the age of majority should revert to the status of a minor with respect to his need for the protection of a guardian.

3. The proceeding for the appointment of the guardian of the person should be conducted in a court of general jurisdiction in children's cases.

Jurisdiction for petitions for guardianship of the person should be vested in a local court of broad jurisdiction. It would be desirable in the more populous areas to have a special division of the court established, or a specialist judge assigned, to handle all matters affecting children, including their legal rights, status, and relationship. In areas where there are at the present time different courts handling guardianship and other matters relating to children, jurisdiction over guardianship should be transferred to that court which deals broadly with matters affecting children.

It is desirable that the court granted jurisdiction should be tied into a unified State court system to insure uniformity and standardization of rules and forms of practice on the part of all such courts in the State. In the

absence of a unified court system in the State, methods should be prescribed for the promotion of uniform and standard practices and procedures with respect to guardianship.

Whatever the court structure, it is essential that there be special competence on the part of the judge for handling children's cases. To ensure that such competence is attracted to the judgeship, the tenure of office should be long enough to warrant special preparation, and the salary should be large enough to compare favorably with those of judges in other assignments.

The court should be provided a suitable and dignified courtroom with adequate facilities and equipment to carry on the court work. The clerical staff should be adequate both in number and in qualifications.

The guardianship proceeding should be available without cost to the child or the petitioner. It should be possible, if it is desired, to file a single petition in behalf of all the children of common parents who may need guardianship. The court should handle guardianship cases in the simple and informal tradition of the children's court. Judicial safeguards of notice, hearing, and proper recording should surround the consideration of each petition. The judge's discretion in the selection of the guardian should not be circumscribed, as is the case in some States, by any prescribed order of preference; rather, the facts adduced in each case, by social investigation or court hearing, should be controlling. Provision should be made for periodic follow-up of the guardianship to ascertain how the child is faring.

4. The court conducting the proceeding for the appointment of the guardian of the person should have social services available to it.

Since guardianship of the person is intended to encompass so many of the attributes of the parental relationship, the proceeding for the appointment of the guardian should be surrounded by the social safeguards and services developed for the protection of the child in other types of substitute parental relationships.

Local social services should be expanded to provide assistance to the court with guardianship cases as well as with other children's cases. These services may be established in the court itself or in a local public welfare agency. The State welfare department should give leadership in stimulating the development of such services.

Social services should be adequate to meet the court's need for initial and follow-up studies and investigation, for finding suitable guardians, for placing the child in temporary care until a guardian is appointed, and for counseling and helping guardians to meet the immediate problems presented by the child and to plan for the future.

It would be desirable to require the court to request that investigations be made and written reports submitted on all petitions for the appointment of guardians of the person. If this is not feasible, however, legislation should be permissive.

Guardianship of the estate

1. The guardian of the person should be entitled to act for the child when the child's whole estate is valued at ($500)[4] or less in lump sum or consists of money payments of ($50)[4] or less a month.

The study shows clearly that the establishment of formal guardianship over small estates is a costly and dubious form of protection for the child. Small estates do not lend themselves to effective administration through the regular procedures governing guardianship of estates. The law should exempt them from the necessity of estate guardianship and should permit whoever has legal responsibility for the person of the child to accept such an estate for the use of the child without the necessity of a court appointment as guardian of estate. When a child has no one legally responsible for his person to whom such a small estate can be entrusted, a proceeding for the appointment of a guardian of the person rather than of a guardian of the estate should be instituted.

The parent or legal guardian of the person who accepts a child's small estate should have full discretion in the use of the estate in behalf of the child, whether it consists of a lump sum or of monthly payments from public-assistance, old-age and survivors' insurance, or veterans' benefits. If questions arise at any time, however, about the competency of the personal guardian to handle the estate for the benefit of the child, the matter should be brought into the court of jurisdiction over guardianship of the person for such action as the court may deem advisable.

2. When a child is entitled to receive assets valued at over ($500)[4] in lump sum or over ($50)[4] in monthly payments, this fact should be reported to the local court of jurisdiction for such action as it deems appropriate; in the event that no problem of management of the estate is found present, the court should permit the guardian of the person of the child to act for the child, without the necessity of an appointment as guardian of the estate.

[4] This amount is set in conformity with the tendency noted in a number of State laws. It should be reconsidered by individual States, however, in relation to the purchasing power of the dollar at a particular date.

The law should give the court of jurisdiction discretion to determine the kind of protection that would be desirable and suitable for each estate that is reported. It should thus be possible for the court to release to the parent or personal guardian an estate needed for the current support, maintenance, and education of a child. If the estate is too small for other investment, and withdrawals are not necessary for the current expenses of the child, it should be possible, as suggested by the Model Probate Code (sections 237 (a) and (c)), for the court to order its conversion into government bonds or a supervised bank account, without the necessity of appointment of a guardian of estate. The appointment procedure should be reserved for estates for which management functions must be discharged.

3. The power of appointing the guardian of the estate should be vested in a court of general jurisdiction in estate matters.

Jurisdiction for petitions for guardianship of the estate should be vested in a local court of broad jurisdiction. It would be desirable in the more populous areas to have a special division of the court established, or a specialist judge assigned, to handle all estate matters.

The court handling guardianship of estate should be a court of record. It should be financed by tax funds rather than by fees, and the judge and other staff should be paid on a salary rather than fee basis. Fee charges should be kept to a minimum. If the court is not a part of a unified State court system, some method should be provided for the promotion of uniform and standard practices and procedures with respect to guardianship matters.

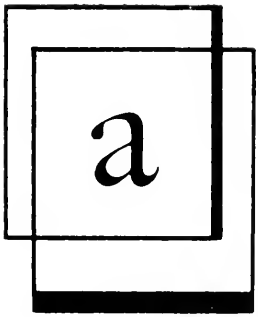
The court should be provided adequate physical facilities and equipment, and its staff should be adequate in number and in qualifications. The business of the court should be conducted in a simple and informal manner with due observance of safeguards of notice, investigation, hearing, and recording. A single petition, if desired, should be allowed to serve all children of common parents needing guardianship of estate. A proper inventory of the estate should be required prior to the appointment of the guardian. Appraisal of inventoried property should be optional with the court. The court should be required to request a financial investigation of the individual seeking appointment as guardian of the estate. If the court does not have a sufficient volume of business to warrant the employment of a special financial investigator, it should be possible to arrange for such service from other public agencies or from commercial agencies. Selection of the guardian of estate should not be narrowed to any prescribed order of preference but should be based on the special competence needed for the management of a particular estate. If the guardian of the person of a child meets the test of financial competence, however, he should have preference for appointment as guardian of the child's estate.

Procedures should be prescribed for maintaining the adequacy of bond, for insuring the solvency of surety and the prompt filing of inventories and periodic accounts, and for controlling investments and disbursements. Annual plans for investment and annual budgets of expenditures should be adopted as supervisory devices.

A final accounting and settlement, subject to court approval in an open hearing, should be required as a basis for formal termination of the guardianship of the estate. The court should appoint as guardian *ad litem* some responsible adult whose interest does not coincide with that of the guardian, to review the account and make the recommendations so that the court may fairly determine any points of controversy.

4. The court appointing the guardian of the estate should have social services available to it.

The court appointing the guardian of the estate should have authority to request social services from local public welfare agencies when in the opinion of the court these services are necessary to such functions as the evaluation of proposed guardians and the preparation of budgets for the support, maintenance, and education of the child.



Appendixes

Appendix A

Glossary of Words and Phrases as Used in This Study

Terms descriptive of children, of their legal position and legal reldtions, and of acts that effect changes therein. The force and validity of each act depend on the statutes of individual States.

ABANDONMENT. The act of giving up a child with the intention of never again resuming or claiming rights to him.

ADOLESCENT. The child in the period of life between puberty and maturity, generally considered to be from 14 to 21 years for males, and from 12 to 21 years for females.

ACKNOWLEDGMENT. The act of a father of a child born out of wedlock in going before a competent officer or court and declaring the child to be his.

ADOPTION. A legal method by which persons take the child of another in their family and make him, for all legal purposes, their own.

AFFILIATION. The act of fixing the paternity of a child born out of wedlock.

COMMITMENT. The act or order by which a court directs the removal of a child from one place to another for purposes described therein.

CURATOR. See Guardian.

CUSTODIAN. A person or agency having control of a child's care, or actually caring for him.

DEEDING. The act of transferring rights in a child by means of a written instrument under seal.

EMANCIPATION. The act by which a child is freed from parental control.

FIDUCIARY. One who is lawfully entitled to handle the money of another in trust and confidence.

GUARDIAN. One having legal control and management of the person or the estate or both of a child during his minority. The guardian is an officer of the court appointing him.

A *natural guardian* is a parent lawfully in control of the person of his child.

A *legal guardian* is anyone appointed by a proper court over the person, estate, or both, of a child.

A *public guardian* is a public official empowered to accept court appointment to act as a legal guardian.

The terms *tutor* and *curator* are used in some States to describe, respectively, court-appointed guardians of person and guardians of estate.

A *testamentary guardian* is anyone designated guardian by the last will and testament of the child's parent.

GUARDIAN AD LITEM. One appointed by a court to represent a child in a particular suit or legal proceeding who has no right of control over the child's person or estate.

GUARDIANSHIP. The office, duty, or authority of a guardian; also the relation subsisting between a guardian and ward.

HABEAS CORPUS. A writ directing one who has a child in his care to bring him before the court issuing the writ to determine his legal custody.

INFANT. See Minor.

IN LOCO PARENTIS. A quasi-parental relationship inferred from and implied by the fact that a child has been taken into a family and treated like any other member thereof, unless an express contract exists to the contrary.

LEGAL GUARDIAN. See Guardian.

LEGITIMATION. The act of giving the character of a legitimate child to one who was not born in wedlock.

MAJORITY. The state of being of full legal age to do acts or discharge functions which, for want of years, the child had hitherto been prohibited from doing or undertaking. Males come to full age on the day preceding the 21st anniversary of birth. The time at which females come to full age varies somewhat in the different States.

MINOR. A child of either sex under full age or majority, that is, one who has not attained the age at which full civil rights are accorded him. The opposite of a *major*. The equivalent common-law term is *infant*, the opposite of *adult*.

NATURAL GUARDIAN. See Guardian.

NEXT FRIEND. One who, without having been regularly appointed guardian, acts for the benefit of a minor child; a *prochein ami*.

PARENS PATRIAE. In the United States, the State, as sovereign, has power of guardianship over persons under disabilities, such as minors.

PARENTS. The lawful father and mother of a child.

PAYEE. One to whom payments are made in behalf of another.

PROCHEIN AMI. See Next Friend.

PUBLIC GUARDIAN. See Guardian.

RELINQUISHMENT. The act of forsaking, surrendering, or giving over parental rights in a child.

STATUS. The position of a person in the eyes of the law, by which the nature of his legal responsibility and of his legal relation to others is determined. The rights, duties, capacities, and incapacities which determine a person to a given class, constitute his status.

SUI JURIS. Said of a child who has attained full legal capacity and no longer needs a guardian to act for him.

TESTAMENTARY GUARDIAN. See Guardian.

TUTOR. See Guardian.

WARD. A child under guardianship; the child whose person or property is under the protection of a court either directly or through a guardian appointed by the court, by reason of his minority.

WILLING. The act of a parent in designating a guardian for a child in his last will.

Terms descriptive of courts and their powers and procedures, the specific nature and manner of which depend upon the statutes of individual States.

ADJUDICATE. To decide, determine, or come to a judicial decision.

APPEAL. To take a matter from an inferior to a superior court for a rehearing or review.

APPOINTMENT. The designation of a person to hold an office or to discharge a trust, such as the guardianship of a child.

CIVIL ACTION. A type of proceeding conducted in relation to the private rights of individuals, such as a guardianship proceeding.

COURT. A place where justice is administered. Courts may be classified in general as:

Courts of record, those in which a final record of the proceeding is made, which imports verity and cannot be collaterally impeached, and *courts not of record,* in which no final record is made.

Courts of equity or *chancery,* which administer justice according to the principles of equity, and *courts of law,* which administer justice according to the principles of common law.

Civil courts, which give remedies for private wrongs, and *criminal courts,* in which public offenders are tried.

State courts, which derive their authority from the individual States and differ in their number and relations in the different States, and *Federal courts,* which derive their authority from the Constitution of the United States and the Acts of Congress.

Courts are further divisible according to area served, as *district* or *circuit courts, county courts, municipal* or *township courts;* according to the powers vested in the courts, for which classification see Jurisdiction; and according to the subject matter of their jurisdiction, as *admiralty courts,* concerned with controversies arising out of commerce upon navigable waters, *probate courts,* concerned with the settlement of estates and the appointment and direction of guardians of minors and incompetents, *courts martial,* concerned with violations of military law.

DECREE. The judicial decision, determination, or judgment.

EQUITY. The power of certain courts to frame and adapt new remedies to particular cases. These courts are allowed a certain latitude to decide matters in consideration of what is just and equitable rather than the mere letter of the law.

EX PARTE. Said of various court actions or proceedings done or decided in the interest of, or with respect to, one side only. Guardianship proceedings are commonly conducted *ex parte.*

JURISDICTION. The power of a court to entertain and decide any action or matter; also the subject matter and geographic territory over which the court's power extends. Jurisdiction may be classified as—

General when the court may act in most cases in which the parties are before it, and *limited* or *special* when the court may act only in certain specified cases.

Original when the court has power to try the case in the first instance, and *appelate* when the court hears cases only on appeal or writ of error from another court.

Exclusive when no other court has power to hear and decide the same matter, and *concurrent* when the same cause may be entertained by one court or another at the option of the party bring the suit.

NOTICE. The information given of some act done or about to be done.

OPEN COURT. Said of a proceeding conducted before the public, as opposed to a proceeding conducted in the privacy of the judge's *chambers*.

PETITION. A written statement bringing a matter before the court to act on. Distinguished from a *motion* which may be oral.

PROBATE COURT. See Court.

Terms descriptive of estates, their management and supervision, the specific provisions for which depend upon the statutes of individual States.

ACCOUNT. A detailed statement of receipts and payments, or of other transactions, of a guardian in connection with an estate confided to him.

ADMINISTRATION. The management of an estate by one legally appointed to take charge of it.

APPRAISEMENT. A just valuation of property set by a person or persons appointed for the purpose.

BOND. An acknowledgment of liability in writing and under seal, binding the signer to pay a certain sum under the specified circumstances or conditions.

ESTATE. Everything one owns, including personal and real property.

FEE. A recompense for official or professional services. In contradistinction to *costs*, which are an indemnification for expenses incurred in connection with a particular matter.

INVENTORY. A list, schedule, or enumeration in writing containing, article by article, the goods and chattels, rights and credits, and, in some cases, the land and tenements of a person.

PERSONALTY. That which is moveable; personal property as distinguished from *real property*.

PROPERTY. Includes cash on hand, money in the bank, stocks, bonds, and other securities, commercial papers evidencing ownership, evidences of debts, notes, credits, mortgages, choses in action. Classified as *personal property* and *real property*.

REAL PROPERTY. Real estate.

SETTLEMENT. An accounting by which the parties come to an agreement as to what is due from one to the other; payment in full.

SURETY. One who makes himself responsible for the due fulfillment of another's obligation, in case the latter, who is called the *principal*, fails himself to fulfill it.

Appendix B

Persons who attended the meeting to advise on the guardianship of children, held in Washington, D. C., June 11, 1948:

Mr. Emery A. Brownell, Secretary, National Association of Legal Aid Organizations, Rochester, New York

Judge Stephen H. Clink, Judge of Probate, Probate Court for the County of Muskegon, Muskegon, Michigan

Miss Bess Craig, Consultant on Services to Children, American Public Welfare Association, Chicago, Illinois

Judge Walter S. Criswell, Judge of the Juvenile Court, Duval County, Jacksonville, Florida

Dr. Gunnar Dybwad, Supervisor, Children's Division, Department of Social Welfare, Social Welfare Commission, Lansing, Michigan

Miss Katharine E. Griffith, Executive Secretary, The Diocesan Bureau of Social Service, Hartford, Connecticut

Mr. Edward F. Hann, Assistant Executive, State Board of Child Welfare, Trenton, New Jersey

Mr. Alan Keith-Lucas, Supervisor, Division of Child Welfare, State Department of Public Welfare, Baton Rouge, Louisiana

Mr. Patrick L. Palace, Chief, Juvenile Division, Probation Office, County of Los Angeles, California

Miss Margaret Reeves, Field Secretary, Child Welfare League of America, New York, New York

Professor Max Rheinstein, The Law School, The University of Chicago, Chicago, Illinois.

Mr. Sol Rubin, Legal Consultant, National Probation and Parole Association, New York, New York

Professor Lewis M. Simes, University of Michigan Law School, Ann Arbor, Michigan

Miss Mary Stanton, Director, Social Welfare Department, Mount Saint Mary's College, Los Angeles, California

Miss Sophie Theis, Executive Secretary, Child Placing and Adoption Committee, State Charities Aid Association, New York, New York

Dr. Ellen B. Winston, Commissioner, State Board of Public Welfare, Raleigh, North Carolina

Representatives of Federal Agencies:

Mr. Herbert Wilton Beaser, Principal Attorney, Office of the General Counsel, Federal Security Agency

Miss Rose J. McHugh, Chief, Special Standards Section, Standards and Pro-

gram Development Division, Bureau of Public Assistance, Social Security Administration

Mr. August Meyers, Chief, General Policy Section, Claims Policy Division, Bureau of Old-Age and Survivors Insurance, Social Security Administration

Mr. Eugene H. Skinner, Senior Policy Consultant, Claims Policy Division, Bureau of Old-Age and Survivors Insurance, Social Security Administration

Mr. A. D. Smith, Assistant General Counsel, Office of the General Counsel, Federal Security Agency

Children's Bureau representatives:

Miss Katharine F. Lenroot, Chief

Miss Mildred Arnold, Director, Social Service Division

Miss Alice Scott Nutt, Director, Special Services Section, Social Service Division

Miss Martha Wood, Director of Field Service, Social Service Division

Mr. Irving Weissman, Director, Guardianship Study, Social Service Division

Miss Margaret Emery, Field Consultant on Foster Care, Social Service Division

Miss I. Evelyn Smith, Consultant on Foster Care, Social Service Division

Miss Marguerite Windhauser, Director, Legal Research Unit, Social Service Division

Mr. E. Richard Perlman, Public Welfare Research Analyst, Social Statistics Section, Division of Statistical Research

Mr. J. G. Riddle, Chief, Press and Radio Section, Division of Reports

Mr. George W. Cain, Editor-Writer, Division of Reports

Appendix C

Outlines and Schedules Used in the Study

FEDERAL SECURITY AGENCY
SOCIAL SECURITY ADMINISTRATION
CHILDREN'S BUREAU

SOCIAL CASE STUDY FACE SHEET

Social Service Division
GUARDIANSHIP STUDY

Court_____ File No. _____

Reason selected for study_____ Appointmt_____
Terminatn_____

MINOR: Name_____ Address_____

GUARDN: Name_____ Address_____

Relation to minor_____ Date appointed_____ Date guardianship terminated_____

Type of guardianship: Estate__ Person __ Both __

CUSTODN: Name_____ Relation to minor_____

1. IDENTIFYING INFO: Race of minor: White__ Negro __ Other (Specify)_____

Item	Minor	Father	Mother	Guardian	Custodian	Item	Number siblings	Others in home
						Related.....	XXXX	
						Not related.....	XXXX	
Sex		XXX	XXX			Sex: Male.....		
						Female.....		
Birth date						Age: Under 5.....		
						5-9.....		
Death date						10-14.....		
						15-17.....		
Cause death						18-20.....		
						21 & over..		
Marital stat								
						Whr- Dead.....		XXXX
School grade completed.						abts: With minor		XXXX
						Elsewhere..		XXXX
						Guar- Same gshp.		
Occupation..						dnshp Diff gshp.		
						stat: Not under.		

2. INTERVIEWS (including contacts with social agencies):

Person interviewed	Date of interview	Relation to minor	Comments on cooperativeness and reliability

FEDERAL SECURITY AGENCY — Social Service Division
CHILDREN'S BUREAU — GUARDIANSHIP PETITION FILED IN 1945 — GUARDIANSHIP STUDY

Court _____ File No. _____

MINOR: Name _____ Address _____

PARENTS: Name _____ Address _____

GUARDIAN: Name _____ Address _____

ATTORNEY: Name _____ Address _____

A. DATE OF: Lapses

1 Petn_____:____:____
2 Disp_____:____:____
3 Bond_____:____:____
a Add_____:____:____
4 Invt_____:____:____
a Add_____:____:____

B. COURT ACTION:

1 Diam 3 Appt
2 Waiv 4 Pend

C. STATUS OF PETITION:

X New 2 Repetn

D. VALUE OF ESTATE:

Shown on:	Capital: Value	Annual: Income
1 Petn: Tot	$_____	$_____
2 Invt: Tot	$_____	$_____
a Real est	$_____	$_____
b Pers prop	_____	$_____
c VA ben	_____	$_____
d OASI ben	_____	$_____
e Oth Fed	$_____	$_____
f SettleFd	$_____	$_____
g Wk comp	$_____	$_____
h Oth(sp)	$_____	$_____
3 Add inv: Tot	_____	$_____

E. AMOUNT OF BOND:

1 First . . $_____
2 Add . . . $_____

F. SURETY:

	1st	Add
Personal	01	11
Corporate	02	12
None	03	13
Inap	04	14

G. PETITION BY:

01 Fa — 06 State DPW
02 Mo — 07 Oth pub ag
03 Bi — 08 Pvt soc ag
04 Oth rel — 09 Court
05 Non rel — 10 VA
11 Oth (sp)_____

H. REASON FOR PETITION

01 Financial only

	Pers only	Both
Parents dead	12	22
Pars unfit	13	23
Adoption	14	24
Marriage	15	25
Mil serv	16	26
Med care	17	27
Oth cons	18	28
Oth(sp)	19	29

I. INVESTIGATION:

a Ordered: X Yes 2 No
b Made by:
1 Court's own staff
2 Staff, other court
3 State DPW
4 Oth pub ag
5 Pvt soc ag
6 Oth (sp)_____
7 Not made
c Findings reported:
1 Yes 2 No
d Recommendation made:
1 Yes 2 No

J. DATA ON MINOR:

a Date of birth_____
b Sex: X Male 2 Fem

J. DATA ON MINOR (cont.)

c Parental status:
1 Unmrd 5 Mo dead
2 Married 6 Both dead
3 Dv,sp,ds 7 Oth(sp)___
4 Fa dead 8 NR
d Whereabouts on petition:
With parents:
01 Fa 02 Mo 03 Both
With other relatives:
11 Grdpars 12 Oth
In foster home:
21 Adp 22 Bdg 23 Oth
In institution:
31 Dep & Neg 34 Mental
32 Delin 35 Oth (sp)
33 Phys hand _____
Other whereabouts:
41 Ind 42 Els
Not reported:
51 NR
e Whereabouts on appmt:
98 Inap 99 NR
__ Reported (enter app code from "d")

K. DATA ON GUARDIAN:

a Sex: 1 Male 2 Fem 3 Inap
b Relation to minor:
01 Parent 06 State DPW
02 Oth rel 07 Oth pub ag
03 Non rel 08 Pvt soc ag
04 Pub gdn 09 Oth(sp)_____
05 Cml org 10 NR
c Nominated by:
Testamentary:
01 Fa 02 Mo
Nontestamentary:
11 Fa 13 Mi 15 Oth(sp)
12 Mo 14 Court

L. TYPE OF GUARDIANSHIP:

a Perm:	b Spec:
01 Est	11 Est
02 Pers	12 Pers
03 Both	13 Both

U. S. Department of Labor
CHILDREN'S BUREAU

GUARDIANSHIP TERMINATED IN 1945

Social Service Division
GUARDIANSHIP STUDY

Court _____ File No. _____

MINOR: Name _____ Address _____

PARENTS: Name _____ Address _____

GUARDIAN: Name _____ Address _____

ATTORNEY: Name _____ Address _____

A. NUMBER OF GUARDIANSHIPS: _____

B. DATE OF:

	LstGdnp	PrevGdnp
1 Appmt		
2 Invt		
a Add		
3 Accts		
a Add		
b Add		
c Add		
d Add		
e Add		
f Add		
g Add		
h Add		
i Add		
4 Term:ptn:		
a Order		

C. REASON FOR TERMINATION:

Funds exh	1	1
Majority	2	2
Minor's reqst	3	3
Death minor	4	4
Death gdn	5	5
Resignation	6	6
Revocation	7	7
Removal	8	8
NR	9	9

D. DISCHARGE BY:

Filling accts	1	1
Recpt minor	2	2
Court order	3	3

E. APPEALS:

Taken	X	X
Not taken	2	2

F. TYPE OF GUARDIANSHIP:

	Lst Gdnp	Prev Gdnp
a Permansnt:		
Estate	01	01
Person	02	02
Both	03	03
b Special:		
Estate	11	11
Person	12	12
Both	13	13

G. PETITION BY:

Father	01	01
Mother	02	02
Minor	03	03
Oth rel	04	04
Non rel	05	05
State DPW	06	06
Oth pub ag	07	07
Pvt soc ag	08	08
Court	09	09
VA	10	10
Oth (sp)	11	11

H. REASON FOR PETITION:

	LstGdnp		PrevGdnp	
	Pers Only	Both	Pers Only	Both
Fin only	01		01	
Pars dead	12	22	12	22
ParsUnfit	13	23	13	23
Adoption	14	24	14	24
Marriage	15	25	15	25
Mil serv	16	26	16	26
Med care	17	27	17	27
Oth cons	18	28	18	28
Oth (sp)	19	29	19	29

I. INVESTIGATION:

a Ordered: Yes	1	1
No	2	2

I. INVESTIGATION (cont):

	Lst Gdnp	Prev Gdnp
b Made by:		
Court staff	1	1
Staff, oth ct.	2	2
State DPW	3	3
Oth pub ag	4	4
Pvt soc ag	5	5
Oth (sp)	6	6
Not made	7	7
c Findings reported:		
Yes	1	1
No	2	2
d Recommendation made:		
Yes	1	1
No	2	2

J. VALUE OF ESTATE:

Shown at Lst gdnp:	Capital Value	Annual Income
Inv Tot	$	$
Real est	$	$
Pers Prop	$	$
VA ben	xxx	$
OASI ben	xxx	$
OthFedBen		$
Settle fds		$
Work comp	$	$
Oth(sp)	$	$
Term Tot	$	$
Prev gdnp:		
Inv Tot	$	$
Term Tot	$	$

K. AMOUNT OF BOND:

	LstGdnp	PrevGdnp
First	$	$
On term	$	$

L. SURETY:

	lstTerm		lstTerm	
Personal	1	1	1	1
Corporate	2	2	2	2
None	3	3	3	3
Inap	4	4	4	4

M. ADMINISTRATIVE COSTS:

	LstGdnp	PrevGdnp
Total	$_____	$_____
Atty	$_____	$_____
Gdn	$_____	$_____
Bond	$_____	$_____
Court	$_____	$_____
Oth(sp)	$_____	$_____

N. SUPERVISION:

a Expenditures:

Authorized	1	1
Not author	2	2
NR	3	3

b Social supervision:

Ordered:	Yes	X	X
	No	2	2
Provided by:			
Court staff		1	1
Stf oth ct		2	2
State DPW		3	3
Oth pub ag		4	4
Pvt soc ag		5	5
Oth(sp)		6	6

O. DATA ON MINOR:

a Date of birth_____
b Sex: X Male 2 Female
c Parental status:
1 Unmrd 5 Mo dead
2 Married 6 Both dead
3 Dv,sp,ds 7 Oth (sp)___
4 Fa dead 8 NR

d Whereabouts on appmt:
With parents:
01 Fa 02 Mo 03 Both
With oth rel:
11 Grdpars 12 Oth
In foster home:
21 Adp 22 Bdg 23 Oth
In institution:
31 Dep & Neg 34 Mental
32 Delin 35 Oth(sp)
33 Phys hand _____
Other whereabouts:
41 Ind 42 Els
Not reported:
51 NR

e Whereabouts on term:
99 NR
____Reported (enter app code from "d")

P. DATA ON GUARDIAN:

a Sex: 1 Male 2 Fem 3 Inap
b Relation to minor:
01 Parent 06 State DPW
02 Oth rel 07 Oth Pub ag
03 Non rel 08 Pvt soc ag
04 Pub gdn 09 Oth(sp)_____
05 Coml org 10 NR

c Nominated by:

Testamentary:
01 Fa 02 Mo

Nontestamentary:
11 Fa 13 Mi 15 Oth(sp)
12 Mo 14 Court _____

Q. COMPLAINTS:

	LstGdnp	PrevGdnp
Filed		
No court action	1	1
Found justified	2	2
Fd not justfd	3	3
None filed .	4	4

Appendix D

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